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1320

United States

1320

# Circuit Court of Appeals

For the Ninth Circuit.

## Transcript of Record.

(IN FOUR VOLUMES.)

DAVID TAYLOR,

Appellant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY,  
a Corporation, TUNGSTEN PRODUCTS COMPANY,  
a Corporation, MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C. W POOLE,  
R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN,  
C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Appellees.

### VOLUME III.

(Pages 769 to 1184, Inclusive.)

Upon Appeal from the United States District Court for the  
District of Nevada.

FILED

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CLERK







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Circuit Court of Appeals

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**Testimony of H. J. Murrish, for Defendants (In Rebuttal).**

Mr. H. J. MURRISH, called in rebuttal, testified as follows:

Mr. WHEELER.—(Q) Mr. Murrish, at any of the interviews that you had in San Francisco with Mr. Jackson and others, prior to the presentation to you of the draft of contract made by Mr. Jackson at that time, was any paper produced by Mr. Jackson and presented to you for inspection?

Mr. THATCHER.—Objected to as not surrebuttal.

The COURT.—Has he not already testified on this very point?

Mr. WHEELER.—No, your Honor, not as to any paper; he has testified as to a particular paper.

The COURT.—Well, I will let him answer; but this has nothing to do with Exhibit “Z”?

Mr. WHEELER.—It has not, your Honor, for we have admitted that Exhibit “Z” is not the paper that was then presented; that stands admitted, notwithstanding the witness at the last hearing said that that paper had been presented.

WITNESS.—I would say there was a memorandum of the main points included in the modified option in use during those conversations and during the meetings, and prior to the time of the execution of the contract that was submitted to the creditors.

Mr. THATCHER.—I move to strike the answer out, now that it has been given, upon the ground it is not surrebuttal.

The COURT.—It seems to me that he testified

(Testimony of H. J. Murrish.)

to that very matter before, and said that this was the document.

Mr. WHEELER.—No question but that the witness has so testified, your Honor. But here is the proposition, your Honor. We have conceded, because we think there can be no question as to the facts [591—586] that this particular piece of paper was not presented; its contents are not a matter of any importance in this case whatever, as we understand it, and it was not offered because the contents were important; it was offered merely as a part of the transaction. The witness, we concede, was wrong in identifying that paper; Mr. Thatcher's statement is there to show on that point; we do wish to know whether or not it is the fact that some paper was produced at that time. The witness Mr. Jackson has testified that he is not sure upon that point.

The COURT.—I didn't quite understand his testimony that way. I will let you put it in.

Mr. WHEELER.—I think that is all.

Mr. THATCHER.—No cross-examination.

By the COURT.—What sort of paper was that, Mr. Murrish?

A. It was just a single sheet of paper.

Q. Was it typewritten?

A. As I recall it, it was.

Q. Just one sheet.      A. Yes.

Q. No cover on it?      A. No.

Q. Any handwriting on the paper?

A. May I explain?

(Testimony of H. J. Murrish.)

Q. No, just answer that question.

A. When I saw this paper—

Q. Just answer whether there was any writing on it besides the typewriting? A. I don't know.

Q. And do you feel certain it was a typewritten paper?

A. I feel quite sure it was, but I would not want to swear to that as an absolute fact, but I feel confident it was.

Q. How long did you have it in your possession?

A. I never had it in my possession, your Honor.

Q. In whose possession did you see it?

A. It was in use during the meeting, and it was in the files of [592—587] the company, and Mr. Nenzel said that he had taken it from the meeting.

Q. You don't know who presented it at the meeting?

A. No, the meetings were informal.

Q. Do you know that Mr. Jackson ever had that paper in his hands?

A. Well, I should say yes, that he did have it in his hands,

Q. Would you say positively that he had it in his hands at that meeting?

A. No, I would not say whether Mr. Jackson or Mr. Taylor submitted it.

Q. Would you want to say that Mr. Jackson submitted it? A. Yes.

Q. What would you say about Mr. Nenzel having produced it from the files of the Company?

A. Well, that I can't explain, your Honor.



(Testimony of H. J. Murrish.)

Q. Now isn't it very possible that Mr. Nenzel produced this very document, Exhibit "Z" at that meeting, and that you saw it, and that that is still the document that you were testifying to, and that Mr. Jackson never saw it?

A. That is possible but I know that it is not so for the reason that the memorandum on this paper was not any memorandum that came from our suggestion.

Q. Then it didn't come from the files of the company?

A. No, since this suit was brought, I said, your Honor, that I had seen it in the files of the company.

Q. It was not produced then at that meeting; it could not have been produced at that meeting by Mr. Nenzel from the files of the company?

A. Oh, no; no.

The COURT.—That is all.

Mr. WHEELER.—I would like to ask a few questions based on your Honor's questions. (Q.) You said that it was produced from the files of the company by Mr. Nenzel, when? [593—588]

A. During the progress for preparation of this trial.

Q. When you say that do you believe that to be the document that you had seen in San Francisco.

Mr. THATCHER.—Object as not surrebuttal.

The COURT.—I don't think any of it is really surrebuttal, but I have admitted it because I would like to know just what the truth is with reference to that.

(Testimony of H. J. Murrish.)

Mr. THATCHER.—I withdraw my objection.

Mr. WHEELER.—Answer the question, please.

(The reporter reads the question.)

A. I do, and chiefly for this reason; that in this document the percentage that the ore had to run is stated, and in the contract as submitted to the creditors it is not; there is no statement about 1.75 tungstic acid, but that was in this memorandum; and in addition to that there was a difference in percentages; 65 per cent to go to Mr. Taylor is mentioned in that, and 62 per cent was the agreement of April 2d, and it was the agreement, as submitted to the creditors. Now these changes were both discussed at that meeting, or at the various meetings, and when I saw these two provisions, I am free to confess I took it for granted that this was the memorandum at that meeting.

Q. There was at that meeting some other memorandum, if not this Exhibit "Z"? A. There was.

Q. And it was not the memorandum, or not the draft of contract that has appeared here?

A. No.

Q. You are still positive that there was some memorandum in writing which preceded the draft of contract? A. Oh, absolutely so.

Mr. WHEELER.—That is all.

The COURT.—(Q.) Well, now, are you positive that Mr. Jackson presented it?

A. No, I am not; it was submitted by Mr. Taylor [594—589] or his attorneys; it came from the other side.

(Testimony of H. J. Murrish.)

Q. Which one of them presented it?

A. I could not tell you that, your Honor. As I say, the meetings were informal; we sat around the tables, and the paper was there; I don't remember just when it was presented; we were discussing various things, and I don't remember who took it up first, but I remember seeing the paper there.

The COURT.—That is all.

Mr. THATCHER.—(Q.) Mr. Murrish, you now appreciate the difference between Exhibit "Z" and the memorandum which you stated Mr. Jackson presented at that meeting?

A. Yes. I stated Mr. Jackson presented it; Mr. Jackson was presenting all of these arguments for Mr. Taylor.

Q. As a matter of fact, Mr. Jackson presented all arguments for Mr. Taylor at that meeting, did he not?

A. No, he presented the main argument; Mr. Taylor talked intermittently; Mr. Bayless talked; we all talked, argued back and forth.

Mr. THATCHER.—That is all.

The COURT.—You may recall Mr. Jackson, if you want to, Mr. Thatcher. [595—590]



**Testimony of John G. Jackson, for Plaintiff (Recalled).**

Mr. JOHN G. JACKSON, recalled, testified as follows:

Mr. THATCHER.—(Q.) Mr. Jackson, do you know when I first became acquainted with the controversies which are here before the Court?

A. I do.

Q. Will you state?

A. It was June 12th, 1919; I met you on that day in Mr. Bayless' office in San Francisco for the first time.

Q. That was after the creditors' meeting, and after all negotiations, or at least then pending negotiations, had ceased, was it not? A. It was.

Mr. THATCHER.—That is all.

Mr. WHEELER.—That is all.

Mr. THATCHER.—We are through.

Testimony closed.

(By agreement of counsel the argument of the case is continued until October 1st, 1920, at 10:00 o'clock A. M., and at 4:00 o'clock P. M. Court adjourns.)

Friday, October 1st, 1920.

Court convened, 10:00 o'clock A. M.

The COURT.—You may proceed, Mr. Thatcher, when you are ready.

Mr. THATCHER.—I would like to have from counsel the agreement of guarantee of Mr. Goodin and Mr. Friedman of the Taylor settlement on the balance of the ore-buying contract.

Mr. COOKE.—We have no objection to using a copy, if it is otherwise competent, so far as we are concerned.

Mr. THATCHER.—We would like to offer in evidence, if the Court please, an original copy of the guarantee contract from Mr. Friedman and Mr. Goodin of the amount of the obligation settled upon [596—591] in the ore-buying contract. We offer it for the purpose of rebutting the evidence of the defendants that the plaintiff was relying upon the Loring contract for this balance due Mr. Taylor, the subject of that suit.

Mr. COOKE.—That is the purpose of it.

Mr. THATCHER.—That is the purpose of it.

Mr. WHEELER.—It is objected to as irrelevant, immaterial and incompetent, not in rebuttal. It appears that Mr. Goodin was the recipient of the Loring funds under an agreement, and Mr. Goodin signs this contract.

The COURT.—It will be admitted.

Mr. WHEELER.—Exception.

Mr. COOKE.—We wish to add the further objection that there is nothing to show that Mr. Taylor knew of the execution and delivery of this instrument at the time of the receipt of the several payments.

Mr. THATCHER.—If that last objection is good, then all of the testimony should be stricken out as to any conversations between Mr. Friedman and myself or any one else, as to where the money was coming from.

(Agreement of Mr. Goodin and Mr. Friedman, dated December 15, 1919, marked Plaintiff's Exhibit No. 53.)

Mr. WHEELER.—If it is not already in evidence, we desire, in view of the document which has just gone in, to put in the contract wherein Mr. Goodin became the trustee for the creditors in this matter.

Mr. THATCHER.—I will agree it may go in subject to the objection. I think it is in.

Mr. COOKE.—If the Court please, with the consent of counsel, there was an arrangement whereby Mr. Goodin was to supply some data [597—592] as to the indebtedness of these various companies. It was sent to the Clerk, and I suppose it should be marked as an exhibit, and we ask that it be marked as one of the defendants' exhibits.

(Letter J. T. Goodin to Cooke, Wheeler & Davis, September 25th, 1920, marked Defendants' Exhibit "A-34.")

Mr. COOKE.—What about this exhibit? (Papers of New York Stock Exchange Sales.)

Mr. THATCHER.—You offered it and we stipulated it could go in, but I would like to see it, so that I can present such further testimony as I desire, to rebut it. What date is this?

Mr. DAVIS.—April 17th, 1920, and September 14th, 1920.

Mr. THATCHER.—Well, I am going to object on the ground they are too remote from the actual time of the sale of the securities to have any bear-



ing on the question, or to rebut Mr. Taylor's own testimony that he lost something over \$4,000.

The COURT.—Well, I suppose they are offered for the purpose of showing that he made money by selling before they dropped.

Mr. COOKE.—Yes.

Mr. WHEELER.—It shows if he had kept his securities until the time that he brought this suit he would have lost money; that he made a profit by selling.

Mr. THATCHER.—I think any immediate drop in and about that time would be competent testimony for the purpose of showing that he really profited by the transaction. The fact of the matter is he testifies that he lost about \$4,000; and it seems to me this is very remote for the purpose of rebutting that.

The COURT.—It may go in, but I will consider the objection. If you want to put in anything more along the same line, Mr. Thatcher, you may do so.

(Sheets of New York Stock Exchange marked Defendants' Exhibit "A-35.") [598—593]

(The case is argued by respective counsel, the argument concluded, and the case submitted at 5:10 o'clock P. M. Saturday, October 2d, 1920.) [599—594]

**Plaintiff's Exhibit No. 1.**

CONSOLIDATED ORES CO.

CONSOLIDATED ORES MINES CO.

David Taylor, President,

730 Symes Building.

Denver, Colorado, February 24, 1919.

R. Nenzel, Esq., Secretary,

Nevada Humboldt Tungsten Mines Co.,

Lovelock, Nevada.

Dear Sir:

In view of the present tungsten situation, I do not believe there is the remotest chance of interesting anybody in the purchase of a property at a half million dollar price. The best thing to do all around would be to close down, but I understand your present position will not allow you to do this without payment of \$170,000 debts. On your estimated production costs, you should realize a net profit of about \$55,000 from the money advanced by me on concentrates. This would leave a net balance, I figure, of about \$115,000 debts.

If I can arrange to advance this money, would you consider the sale of the stock to me on a basis of twenty-eight cents (28¢) per share, payments to be made by allotting to present owners of the stock one-half of the net profits from operation, as and when realized—enough concentrates to be first delivered to me to secure my \$100,000 loan at the market value, and then the \$120,000 to be repaid with 7% interest before any profits were counted.

[607—1]

This would, in effect, be modifying my present option to a basis of 40¢ per share instead of 50¢ per share, and instead of making regular monthly payments, which I do not believe anybody would make at the present time, would allow us to operate and pay for your stock out of the mine, if the mine is worth the money involved; and means that you would be giving me a one-half interest in the mine for liquidating your present indebtedness.

I do not know how this would work out, and whether I could do anything on this basis or not, and am merely sending this forward as a tentative suggestion.

I shall leave New York for the West Sunday morning, but a telegram Saturday will reach me at the Commodore Hotel, 42nd Street, New York.

Yours very truly,

DAVID TAYLOR.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 1. Filed Sept. 14, 1920. T. J. Edwards, Clerk.



**Plaintiff's Exhibit No. 2.**

NEVADA HUMBOLDT TUNGSTEN MINES CO.  
Mines Located Near Mill City, Humboldt County,  
Nevada.

Office, Lovelock, Nevada.

Lovelock, Nevada, February 14th, 1919.

Captain David Taylor,  
730 Symes Building,  
Denver, Colorado.

Dear Sir:

We have to-day forwarded through the First National Bank of Lovelock a sight draft, attached to bill of lading. [608—2] covering the first car of concentrates shipped to our order to Murray, Utah. Not having all the assay certificates we attached thereto Watt's telegrams and which we trust will answer their purpose until the certificates can be forwarded, however, in the meantime we have wired Watts to forward to you a complete copy of all analysis on lots #1-R to 27-R, and you no doubt will have received them before the bank presents the draft for payment.

The concentrates were weighed twice by us. We weighed each individual sack as the material came from the magnetic separator, and which gave us a total weight of 100788 pounds. After having this material hauled to Mill City and stored in a warehouse, until the entire shipment was transferred from the mine to the railroad station, we then had a car stopped and again weighed the material in lots of five sacks each, which gave us

a total weight of 101007 pounds, or a difference of 381 pounds. This difference is probably due to different scales, etc., but the results are close enough to satisfy us that the weights, as shown on the bill are correct.

The reason why we have been wiring you whether or not we could handle the draft of \$40,000.00 as a cash item is due to the fact that one of the notes with the Wells Fargo Nevada National Bank fell due on the 11th inst., and our bank here advised them to charge their account with \$10,000.00 and interest and issue a renewal note for \$15,000.00, which leaves a balance due at that bank of \$40,000.00.

I might add that the conditions at the mine are exceptionally bright. On the #2 South workings we have [609—3] opened up an ore body which is over 15 feet wide, and a good grade of ore. On the #1 South we encountered a dyke sometime ago and which cut off the ore. Yesterday we drove through the dyke and relocated the ore, which is of a good grade, but as yet insufficient work has been accomplished to determine the extent of the ore body. Everything else is running along smoothly and if nothing happens we believe we will be able to ship you 100 tons by the 10th or 15th of next month.

With kind personal regards from the writer,

Yours very truly,

R. NENZEL.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Hum-

Humboldt Tungsten Mines Co. et al. Plffs. Exhibit  
No. 2. Filed Sept. 14, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 3.**

NEVADA HUMBOLDT TUNGSTEN MINES CO.  
Mines Located Near Mill City, Humboldt County,  
Nevada.

Office, Lovelock, Nevada.

Lovelock, Nevada, February 24th, 1919.

The Consolidated Ores Company,  
730 Symes Bldg.,  
Denver, Colo.

Gentlemen:

As per my letter of recent date, I hereby wish to give the information of the telegram I sent to Captain Taylor at New York yesterday:

“The number one drift south is eighty-five feet beyond Granite Dyke ore low grade stop Drift number one sixty feet beyond Bancroft sampling stop Number two So. tunnel sixty feet beyond Bancroft sampling value of ore one and one-half per cent stop Number two north two hundred seventy-five feet from shaft average width of vein nine [610—4] feet ore milling one per cent stop Number two south one hundred feet beyond Bancroft sampling average width of vein four and one-half feet value of ore one-half of one per cent stop Number three north drift sixty feet from shaft vein ten feet wide value of ore one and one-



half per cent stop Number three south fifty-five feet from shaft five feet wide one per cent ore stop Main working shaft has been advanced twenty-four feet all in good ore Contract made yesterday to sink ninety feet next thirty days Mine in much better condition than when Bancroft last sampled same."

The reason that the Main Working shaft has not been sunk any deeper is due to the fact that we let a contract a short time ago and shortly after the contractors started to work some of the men were killed, and it was several weeks before we could get anyone to work down in the mine.

The writer expects to go to Mill City some time during the latter part of this week and upon his return will write you fully regarding the physical condition of the mine and the amount of concentrates we have on hand.

Yours very truly,  
R. NENZEL.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 3. Filed Sept. 14, 1920. T. J. Edwards, Clerk.

**Plaintiff's Exhibit No. 4.**

**CONSOLIDATED ORES CO.**

David Taylor, President.

730 Symes Building.

Denver, Colorado, March 7, 1919.

Nevada Humboldt Tungsten Mines Co.

Lovelock, Nevada.

Dear Sirs:

The results of development work in the mine, as recently [611—5] reported, are certainly most gratifying, and if they continue as well I think there is a chance that by the beginning of April I may be able to persuade some New York people to advance the necessary money to clean up all the Company's indebtedness in return for some modified form of option. I am trying to study out such a proposition, which will prove more attractive to an investor than the present option, and which will also be an inducement to your stockholders to agree to a change. While the tentative suggestion made in my last letter from New York would be a good one from the investor's standpoint, it does not furnish any inducement for your stockholders to change the present form of option.

Will you please advise me how you stand with regard to your various creditors and what arrangements have been made in regard to a definite time extension of notes, etc.

With regards,

Yours very truly,

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 4. Filed Sept. 14, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 5.**

**CONSOLIDATED ORES CO.**

David Taylor, President.

730 Symes Building.

Denver, Colorado, March 7, 1919.

Mr. C. W. Poole,

Nevada Humboldt Tungsten Mines Co.,

Mill City, Nevada. [612—6]

Dear Mr. Poole:

Will you advise me what the present status is of the small fraction in the center of the Nevada Humboldt Tungsten Mines Company holdings, which is not held by the Company and about which you wrote me some thirty days ago.

Could you not arrange to send us by mail once a week a definite statement of work accomplished, assays, size of ore shoots, etc., so that I may keep this work plotted up on the map of development work, of which I believe Bancroft sent you a copy. In making such reports I should suggest that the nomenclature used in this map be followed.

With regards,

Yours very truly,

DAVID TAYLOR.



[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 5. Filed Sept. 14, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 6.**

NEVADA HUMBOLDT TUNGSTEN MINES CO.  
Mines Located Near Mill City, Humboldt County,  
Nevada,

Office, Lovelock, Nevada.

Lovelock, Nevada, March 10th, 1919.

Captain David Taylor,  
730 Symes Building,  
Denver, Colorado.

Dear Sir:

We received your several communications from New York, also yours of the 7th from Denver discussing the possibilities of making some new arrangements in regard to our option, and in this connection will state that we had a meeting [613—7] of all the stockholders interested and thoroughly discussed the tentative suggestions made by you in your New York letter which, however, did not meet with any approval, owing to the fact that we did not feel that there was any actual or immediate benefit to be derived from such changes over and above our present option and agreement. Your proposition of the 7th inst. will be discussed among those interested as soon as we can get together. Of course, you have made no definite statement or proposition on what basis you would be willing to enter into a new agreement, but the writer per-

sonally feels that we could come to some agreeable understanding if the proposition is made attractive enough from our standpoint, as well as the investor's. Should you, in the near future, arrive at some definite plan, as outlined in your communication, we could come to Denver, if necessary, to talk over such proposed change, or should you personally wish to see the property before entering into any different arrangement, you could discuss this matter with us while you were here.

Referring to my telegram of the 3d inst., stating that we would have a carload of concentrates ready for shipment by the 10th of this month, will state that owing to the rainy and stormy weather which we had last week we have not been able to operate our home made roasters and it, therefore, will probably be sometime the latter part of this week before shipment is ready to leave Mill City. Owing to the crude method of construction of the roasters we have found it necessary to operate them outside in the open air, and of course, bad weather interferes with the operations, and in which case [614—8] we are obliged to close down until weather permits operation. The new furnace was shipped from Denver on the 26th of last month and no doubt it will reach us shortly and as soon as it does we will ship you a third car of concentrates, as soon as we can, should you decide to have them shipped instead of storing them at the mine or Mill City.

The main shaft has been sunk to a depth of sixty

feet since our telegram to you giving the new development work and we are glad to inform you that we have encountered some very rich ore. The ore contains so much scheelite that we are unable to handle more than forty tons per twenty-four hours in the mill, when working on ore taken from the shaft. How long this will continue we do not know, but it certainly looks very encouraging. Another encouraging feature of the new development is that the ore does not contain nearly as much sulphides as it did between the second and third levels and from the present indications it would appear as though we are penetrating an oxidized zone.

We wire you today as follows:

“We have fifteen tons concentrates at Mill City. Eight tons being hauled today. Will probably be latter part of week before carload is ready for shipment. In order to meet payroll and Sunday accounts and to apply five thousand on Wells Fargo note would appreciate if you would allow us draw sight draft for fifteen thousand immediately. Advise our expense. Letter following.”

We hated to ask you for this request as we realize that we are behind in delivering our concentrates as per contract at the present time, but in order to make the best possible grade of scheelite with the least possible amount of impurities we have had a lot of difficulties to contend with and which has delayed us, but we are in hopes that as



soon as [615—9] the new furnace is installed we will be able to furnish the balance of the contract as soon as the concentrates can be roasted.

The writer expects to leave for Chicago sometime during the later part of this month and before leaving will ascertain if you will be in Denver and if so will make arrangements to stop off and see you and discuss these various matters with you.

With kindest regards, I remain,

Yours very truly,

R. NENZEL.

[Endorsed]: No. B-7 U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 6. Filed Sept. 14, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 7.**

**CONSOLIDATED ORES CO.**

David Taylor, President.

730 Symes Building.

Denver, Colorado, March 11, 1919.

Nevada Humboldt Tungsten Mines Co.,

Lovelock,

Nevada.

Dear Sir:

Last night I received your telegram asking for an advance of \$15,000.00 before shipment of carload of ore now due, and I was sorry not to be able to immediately agree to do so.

I now understand that Mr. Frank Hess' estimate of the stock of Tungsten concentrates in the United States is 8000 tons, and since reporting to you the sale of the small lot by [616—10] us at \$10.00, we have been advised that this was bought for use in filling an old contract and that it does not therefore represent new business or suggest a revival in the market.

In writing you yesterday about a shipment of additional concentrates as security for money already advanced, I presume you understand that if we follow the procedure outlined in the contract for determining the market value, such market value would probably be placed at not over \$6.00, because I do not believe you could at present get a bona fide bid out of any domestic consumer for over this amount.

I want to make things as easy as possible for you however, as I am of course interested in furnishing as much capital as possible for development of the mine.

However, if I had known as much as I now do about the Tungsten market when I was in San Francisco, I would not have considered a \$10.00 advance, nor do I believe that you would have asked for it, and it seems to me that the only thing to do now is to work together to pull the thing through on some basis, but this basis, however, must be mutual.

When I was in San Francisco, Mr. Nenzel was going to send me a detailed statement of your creditors with the amounts due each one, and also from

time to time the amounts paid against such debts. This statement has not been received by me up to the present time.

It is possible that if I could talk the general situation over with some of you, we could arrive at some solution of the entire matter. For various reasons it is impossible for me to leave Denver at present, but possibly Mr. Murrish or some of the rest of you could come over to Denver, in which case I would [617—11] be delighted to see them, but believe if they come over with the idea of some financial rearrangement, it would be well for them to have a balance sheet of the books and a full statement showing the amount and present status of all indebtedness.

Yours very truly,

DAVID TAYLOR.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 7. Filed Sept. 14, 1920. T. J. Edwards, Clerk.



**Plaintiff's Exhibit No. 8.**

**WESTERN UNION TELEGRAM.**

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always open.

1919 Mar. 12 P. M. 11, 18.

A430SF 65 NL

FD Lovelock Nev 12

Capt David Taylor

730 Rymes Bldg Denver Colo

Your message and letters received Stop  
Poole Freidman and Murrish out of town  
Stop Will get in touch with them tomorrow  
and wire you fully Stop Just returned from  
mine Stop Mine never looked so good Stop  
Are experiencing difficulty in roasting con-  
centrates owing to sulphur fumes Stop  
Assay on concentrates twenty three tons now  
at Mill City sixty six percent Tungsten point  
thirty seven sulphur.

**R. NENZEL.**

[Endorsed]: No. B-7. U. S. District Court, Dis-  
trict of Nevada. David Taylor vs. Nevada Hum-  
boldt Tungsten Mines Co. et al. Plffs. Exhibit  
No. 8. Filed Sept. 14, 1920. T. J. Edwards, Clerk.  
[618—12]

**Plaintiff's Exhibit No. 9.****NEVADA HUMBOLDT TUNGSTEN  
MINES CO.**

Mines Located Near Mill City, Humboldt County,  
Nevada.

Office, Lovelock, Nevada.

Lovelock, Nevada, March 21st, 1919

Captain David Taylor,  
730 Symes Building,  
Denver, Colorado.

Dear Sir:

Your letter of the 17th inst. has been received and in reply will state that we have shipped ten sacks of concentrates to Mr. Thane, the exact weight of which are not in my position, but presume it amounted to over a thousand pounds or thereabouts.

We are certainly having a time in roasting sufficient concentrates in order to allow us to make a shipment. The new roaster which I wired you about was installed after experiencing a considerable amount of trouble in getting the thing to work. We have experimented with it for the past four or five days and find that it is an utter failure. The mechanical arrangement in the machine was poorly built and in many instances too light to do the work. The ravel in the furnace burnt out and we have finally taken the machine out and thrown it over the dump and are now building a furnace along the plans similar to the ones we

used in roasting the first car of concentrates, with the exception that we are making some alterations and changes in so far as using a blower and two burners instead of one, which will double the capacity and at the same time we hope it will eliminate the fumes so [619—13] that when we are roasting it will not interfere with the operation of the mill, as it has in the past when roasting the high sulphur concentrates.

The Legislature adjourned last night and Mr. Friedman was supposed to be home this morning, but he had other business in Carson City which he wanted to finish before returning, so he will not be home until Monday noon, and as soon as he returns he no doubt will take up the matter with you direct in reference to the various subjects which you have brought to our attention.

The mine is looking better than ever. We started cutting the station on the fourth level and we will drift 20 feet each way at this point and then continue the shaft on down.

The ore for the past thirty feet has been of an exceptionally high grade character.

Yours very truly,

R. NENZEL.

[Endorsed]: No. B-7. U. S. District Court District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 9. Filed Sept. 14, 1920. T. J. Edwards, Clerk.

**Plaintiff's Exhibit No. 10.****WESTERN UNION TELEGRAM.**

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always open.

Mar 25 AM 4 30

C335SF 121 Blue

FD Lovelock Nev 1025 P 24

Capt David Taylor

730 Symes Bldg Denver Colo

Just returned from Legislation and reviewed all your correspondence Stop Conclude from your correspondence that you feel unable to [620—14] exercise your present option owing to depressed Tungsten market condition and therefore we must anticipate your possible failure to exercise your option Stop Suggest that you and Bancroft come here some time this week as all stockholders are here now and am sure you will find mine development fulfilling your most sanguine expectation and am confident that we could arrive at some modified arrangement as suggested in your correspondence but immediate action is necessary as am leaving for New York and Washington in week or ten days and would stop off at Denver but am traveling with several other parties Stop Wire answer.

L. A. FRIEDMAN.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit



No. 10. Filed Sept, 14, 1920. T. J. Edwards,  
Clerk.

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**Plaintiff's Exhibit No. 11.**

**WESTERN UNION TELEGRAM.**

Paid fast day message 10:15 A. M.

Denver Colorado, March 25, 1919.

Mr. L. A. Friedman Pres

Nevada Humboldt Tungsten Mines Co.

Lovelock Nevada

Bancroft out of town Impossible leave Denver  
at present writing

**DAVID TAYLOR.**

Chg Consolidated Ores Co. 730 Symes Bldg.,  
Denver.

[Endorsed]: B-7 U. S. Dist. Court, Dist. of  
Nevada. Taylor vs. Nevada Humboldt Tungsten  
M. Co. et al. Plffs. No. 11. Filed Sept. 14, 1920.  
T. J. Edwards, Clerk. By E. O. Patterson, Dep.  
[621—15]

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**Plaintiff's Exhibit No. 12.**

**CONSOLIDATED ORES CO.**

David Taylor, President.

730 Symes Building.

Denver, Colorado, March 25, 1919.

Mr. L. A. Friedman, Pres.,

Nevada Humboldt Tungsten Mines Co.,

Lovelock, Nevada.

Dear Mr. Friedman:

Your day letter of the 24th reached me duly

and I was sorry to have to wire you today that neither Bancroft nor I could come to Lovelock at present.

Bancroft has been away on an examination for ten days and will not return to Denver until April 1st. He leaves Denver about April 10th for a two-months examination, and during the ten days he is here he will be pretty busy preparing his report on the examination he is now making.

I have some negotiations on for the purchase of a chemical plant in Denver, which will probably drag along until about the 10th of April, so that I cannot leave before then.

Regarding the exercising of the option, it certainly looks pretty blue at present, though, if I could make, say, a two-year contract at \$11.00 or thereabouts for the product, it would probably be all right providing of course the mine showing continues good as at present. This, however, seems to be impossible. While in New York I found the President of one of the strongest banks quite interested in the general proposition and I believe that on some modified form of option I could induce him to go ahead when I go East again, which will be the [622—16] latter part of April.

In order to work in with Bancroft's position, I suggest that Poole come to Denver during the first week in April, bringing exact data as to development work, assays, etc., so that he and Bancroft together can work up a definite tonnage statement of present ore developed.

Could you not also arrange to come on with him for a couple of days and join your friends with whom you are going East at either Cheyenne, Julesburg or Omaha? In which case, if you will advise me I will be glad to get you pullman reservation.

Before going East it will be advisable for me to have a book balance, say, of either March 1st, or April 1st, with a list of all indebtedness and the terms of credit arranged on individual accounts, and if possible, a statement showing what income and excess profit taxes will also be payable, as this last statement will be carefully considered by any possible purchaser.

If you cannot do this, would your stockholders be willing to have Nenzel, Murrish and Poole appointed as a joint committee to represent all of them in readjusting the option, as, I believe that after several days "wrangling," we could agree on some mutually satisfactory plan.

The general basis of a readjustment which I have in mind is some basis on which cash be furnished for the liquidation of all the company's indebtedness plus my ability to acquire the stock, or 75% of it, on a basis of paying for the stock out of future earnings. I believe that the most one could count on a possible purchaser doing at present would be to furnish enough cash or guarantee to clear up all the indebtedness.

Referring to Nenzel's telegram about an inquiry from the Western Metals Company, I think under present conditions it is very unwise to quote any prices to any dealers or brokers, as we are in touch with all consumers ourselves. If you make an offer to any dealers, they will simply repeat the offer to the same people with whom we are trying to sell. I enclose herewith copy of my letter to them to-day, giving them information but stating that all offers must come from them.

With regards,

Yours very truly,

DAVID TAYLOR,

President.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co., et al. Plffs. Exhibit No. 12. Filed Sept. 14, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

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**Plaintiff's Exhibit No. 13.**

NEVADA HUMBOLDT TUNGSTEN MINES CO.  
Mines Located Near Mill City, Humboldt County,  
Nevada Office, Lovelock, Nevada.

Lovelock, Nevada, March 27th, 1919.

Captain David Taylor,  
730 Symes Building,  
Denver, Colorado.

Dear Sir:

We wired you as follows this morning.

"We have fifty tons concentrates ready for ship-



ment. Will ship soon as can get car spotted. Probably Saturday. Will have another fifty ton car ready probably between fifth and tenth of April. Our new home made furnace working fine. How much money may we draw now as must meet our payrolls." [624—18]

A car was ordered to be spotted in Mill City yesterday and as soon as it is spotted the concentrates will be loaded and shipped, the same as our previous instructions, and unless some unforeseen incident should happen we expect to have a third car ready for shipment between the 5th and 10th of April, and the fourth car should be ready for shipment the 1st of May.

Owing to the consolidation of the Rochester properties now under way at Rochester, Mr. Poole, as well as his Engineering force, has been rather busy and no accurate survey of mine development has been made since Mr. Bancroft was out here. We, however, expect to have our Engineer out there within a week or so to check up the development work and no doubt you will receive a report noting the changes that have been made since Mr. Bancroft completed his work of examination.

I might add that the fourth level has been cut and in drifting north the vein is seven feet wide and in drifting south the vein is ten feet wide, all in exceptionally high grade ore. It will probably take us two or three days to put up a raise from the 350 to the 300 foot level in order to put in another pocket so we can have a larger pocket capacity

in the mine and then we will again continue the sinking of the main shaft to the 500 foot level.

The new furnace, which the writer mentioned in a previous communication that we were then installing, is working like a charm. Everything connected with it has been made so that it works almost automatically and does away with absolutely all of the fumes which so hindered our operations when using our first home made furnace and also the roaster received from the Denver Fire Clay Company. The furnace has been running constantly for [625—19] the past three or four days and is averaging a little better than six tons of clean product per twenty-four hours, and through the good fortune of making this furnace work it accounts for our being able to ship a carload of concentrates at this time and another one within ten days or two weeks time.

Yours very truly,

R. NENZEL.

[Endorsed]: No. B-7. U. S. District Court. District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 13. Filed Sept. 14, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

**Plaintiff's Exhibit No. 14.**

**WESTERN UNION TELEGRAM.**

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always Open.

1919 Mar 28 P. M., 12:10.

A186SF 13

Lovelock, Nev. 1034A 28.

Capt. David Taylor,

730 Symes Bldg., Denver, Colo.

Murrish, Poole and I leave number twenty to-  
morrow morning arriving Denver Sunday noon.

R. NENZEL.

[Endorsed]: B-7. U. S. District Court, District  
of Nevada. David Taylor vs. Nevada Humboldt  
Tungsten Mines Co. et al. Plffs. Exhibit No. 14.  
Filed Sept. 14, 1920. T. J. Edwards, Clerk. By  
E. O. Patterson, Deputy.

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**Plaintiff's Exhibit No. 15.**

(Note: See "Report on a Preliminary Investi-  
gation of the Nevada-Humboldt Tungsten Mine at  
Tungsten, Humboldt County, Nevada. By Howland  
Bancroft.") [626-20]

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**Plaintiff's Exhibit No. 16.**

THIS AGREEMENT this day entered into be-  
tween David Taylor, of Denver, Colorado, first  
party, and L. A. Friedman, Lena J. Friedman, C.

W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and H. J. Murrish, second party.

WITNESSETH:

WHEREAS the parties hereto, on or about January 16, 1919, entered into an agreement in respect to the purchase and sale of certain stock of the Nevada Humboldt Mines Company, the Tungsten Products Company and the Mill City Development Company, reference to which contract is hereby made and which said contract is made a part hereof, and

WHEREAS the Nevada Humboldt Tungsten Mines Company on the same date, entered into an agreement with the said David Taylor for the advance of certain monies on scheelite concentrates, as more particularly appears in said agreement to which reference is hereby made, and

WHEREAS this agreement is supplemental to both of said agreements and all of said agreements are now to be read together and considered as one in so far as applicable, due reference being had to the changes herein made, and

WHEREAS, owing to the demoralization of the tungsten market it seems impossible for the said David Taylor to market scheelite concentrates or to interest parties in the purchase of tungsten properties, and for that reason it is deemed probable that the said Taylor will not be able to exercise his option contained in the above mentioned agreement, and



WHEREAS, by reason of the facts herein named it may become [627—21] impossible for the Nevada Humboldt Tungsten Mines Company and the other companies above referred to to secure sufficient funds for the liquidation of their indebtedness, and

WHEREAS it is the purpose of this agreement to so modify the said opinion as to enable the said Nevada Humboldt Tungsten Mines Company and its allied companies to pay its debts, continue its operation and secure itself from the jeopardy of possible loss through suits by its creditors,

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) each to the other in hand paid, it is mutually understood, covenanted and agreed as follows, to wit:

1. The first party undertakes to secure by borrowing for the Nevada Humboldt Tungsten Mines Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of Two Hundred and Twenty Thousand (\$220,000.00) Dollars, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing

such sum of money, 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company, and 62% of one-half of the issued capital stock of the Mill City Development Company; that a deposit of the amount necessary [628—22] to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided.

IT IS MUTUALLY UNDERSTOOD AND AGREED,

A. That the said sum raised by the first party herein is a loan to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not a payment for stock; and that same is to be evidenced by the issuance of redeemable preferred stock with a maximum of 7% cumulative interest, provided that said stock shall not be sold for less than 95% of par net to the Company.

B. That the second parties hereto will cause a new company to be organized to which the assets of the companies herein described shall be conveyed; or shall amend the present articles of the Nevada Humboldt Tungsten Mines Company and its allied companies hereinbefore mentioned, in order to effectuate this agreement as shall be required by the first party.

C. It is agreed that in such incorporation, or in the amendment above provided, due and proper

provision shall be made (1) that 80% of the Board of Directors must approve the sale of any of the property of the Company of the purchase of additional property; (2) that the cumulative voting power of the common stock shall not be taken away; (3) that the net receipts from any relief received from the United States Government under the War-Minerals Relief Act of the corporations herein mentioned or any of them, shall inure to the benefit of such new corporation as may be formed; (4) that profits shall be distributed whenever same have accumulated to the amount of Fifty Thousand (\$50,000.00) [629—23] Dollars or over, after the debts are paid, unless contrary provided by a vote of 80% of the Directors; (5) and further, that the preferred stock shall be redeemed out of the profits on June 30 or December 31, of every year, whenever the sum of Fifty Thousand (\$50,000.00) Dollars is accumulated and before any dividends are paid on the common stock.

D. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that the performance of this agreement shall release the first party from any and all obligation to pay the purchase price of said stock mentioned in the option hereinbefore referred to.

E. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be

of no further force or effect if the first party shall not have negotiated the loan and secured the money provided in Paragraph 1 hereof.

Time is the essence of this agreement, and each and every clause hereof shall bind and benefit the heirs and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 2d day of April, 1919.

DAVID TAYLOR,

First Party.

C. W. POOLE,

R. NENZEL,

H. J. MURRISH,

L. A. FRIEDMAN,

LENA J. FRIEDMAN,

C. H. JONES, [630—24]

G. K. HINCH,

J. T. GOODIN,

V. A. TWIGG,

J. G. HUNTINGTON,

Second Parties.

By R. NENZEL,

Attorney in Fact.

By C. W. POOLE,

Attorney in Fact.

KNOW ALL MEN BY THESE PRESENTS, that I, J. G. Huntington, do hereby name, constitute and appoint C. W. Poole as my true and lawful attorney for me in my place, name and stead, to sell, contract, assign, hypothecate or otherwise dispose of or agree to dispose of all of my shares of



stock in the Nevada Humboldt Tungsten Mines Company, the Mill City Development Company and the Tungsten Products Company, or in any of said companies; giving and granting unto my said Attorney full power to do any and everything in relation to said stock that I could do if personally present with full power of substitution.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 1919.

J. G. HUNTINGTON.

Witness:

L. A. FRIEDMAN.

R. NENZEL.

(Documentary stamp.)

KNOW ALL MEN BY THESE PRESENTS, That I, L. A. Friedman, do hereby name, constitute and appoint R. Nenzel as my true and lawful Attorney for me and in my place, name and stead, to sell, contract, assign, hypothecate, or otherwise dispose of or agree to dispose of all of my shares of stock in the Nevada Humboldt Tungsten Mines Company, the Mill City Development Company, and the Tungsten Products Company, or in any of said companies; giving and granting unto my said Attorney full power to do any and everything [631—25] in relation to said stock that I could do if personally present with full power of substitution.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 1919.

L. A. FRIEDMAN.

Witness:

J. S. HUNTINGTON.

C. W. JONES.

(Documentary stamp.)

KNOW ALL MEN BY THESE PRESENTS, That I, Lena J. Friedman do hereby name, constitute and appoint R. Nenzel as my true and lawful Attorney for me and in my place, name and stead, to sell, contract, assign, hypothecate, or otherwise dispose of or agree to dispose of all of my shares of stock in the Nevada Humboldt Tungsten Mines Company, the Mill City Development Company, and the Tungsten Products Company, or in any of said companies; giving and granting unto my said Attorney full power to do any and everything in relation to said stock that I could do if personally present with full power of substitution.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 1919.

LENA J. FRIEDMAN.

Witness:

C. W. JONES.

J. G. HUNTINGTON.

(Documentary stamp.)

KNOW ALL MEN BY THESE PRESENTS, that I, C. W. Jones, do hereby name, constitute, and appoint R. Nenzel as my true and lawful attorney for me in my place, name and stead, to sell, contract, assign, hypothecate, or otherwise dispose of or agree to dispose of all of my shares of stock in the Nevada Humboldt [632—26] Tungsten Mines Company, the Mill City Development Company,

and the Tungsten Products Company, or in any of said companies; giving and granting unto my said Attorney full power to do any and everything in relation to said stock that I could do if personally present with full power of substitution.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 1919.

C. W. JONES.

Witness:

L. A. FRIEDMAN.

J. G. HUNTINGTON.

(Documentary stamp.)

KNOW ALL MEN BY THESE PRESENTS, that I, G. K. Hinch, do hereby name, constitute and appoint R. Nenzel as my true and lawful Attorney for me and in my place, name and stead, to sell, contract, assign, hypothecate, or otherwise dispose of or agree to dispose of, all of my shares of stock in the Nevada Humboldt Tungsten Mines Company, the Mill City Development Company, and the Tungsten Products Company, or in any of said companies; giving and granting unto my said Attorney full power to do any and everything in relation to said stock that I could do if personally present with full power of substitution.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 1919.

G. K. HINCH.

Witness:

H. E. LOUFEK.

TOM P. EBERT.

(Documentary stamp.)

KNOW ALL MEN BY THESE PRESENTS, that I, J. T. Goodin, do hereby name, constitute and appoint R. Nenzel as my true and [633—27] lawful Attorney for me and in my place, name and stead, to sell, contract, assign, hypothecate, or otherwise dispose of or agree to dispose of, all of my shares of stock in the Nevada Humboldt Tungsten Mines Company, the Mill City Development Company, and the Tungsten Products Company, or in any of said companies; giving and granting unto my said Attorney full power to do any and everything in relation to said stock that I could do if personally present with full power of substitution.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 1919.

J. T. GOODIN.

Witness:

C. W. JONES.

J. G. HUNTINGTON.

(Documentary stamp.)

KNOW ALL MEN BY THESE PRESENTS, that I, V. A. TWIGG, do hereby name, constitute and appoint R. Nenzel as my true and lawful Attorney full power to do any and everything in resell, contract, assign, hypothecate, or otherwise dispose of or agree to dispose of, all of my shares of stock in the Nevada Humboldt Tungsten Mines Company, the Mill City Development Company, and the Tungsten Products Company, or in any of said companies; giving and granting unto my said Attorney full power to do any and everything in rela-



tion to said stock that I could do if personally present with full power of substitution.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of March, 1919.

V. A. TWIGG.

Witness:

C. W. JONES.

J. G. HUNTINGTON.

(Documentary stamp.)

[634—28]

[Endorsed]: Agreement between David Taylor & L. A. Friedman et al. Dated April 2, 1919. Original signed. No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plff.'s Exhibit No. 16. Filed Sept. 14, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

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**Plaintiff's Exhibit No. 17.**

THIS AGREEMENT made and entered into this — day of June, 1919, by and between David Taylor hereinafter referred to as "Taylor"; party of the first part; Nevada Humboldt Tungsten Mines Company, Tungsten Products Company hereinafter jointly referred to as the "Companies" and separately referred to as the "Mines Company" and the Products Company, parties of the second part; L. A. Friedman, Lena J. Friedman, C. W. Poole, John. G. Huntington, R. Henzel, S. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, and H. J. Mur-

rish: stockholders of the above-named companies, parties of the third part and such creditors of the companies as shall become parties hereto as hereinafter provided, hereinafter referred to as "Creditors,"

WITNESSETH:

WHEREAS, the Mines Company and the stockholders represent that the Mines Company owns and operates a tungsten mine located on 80 acres near Mill City, in Humboldt County, Nevada—being property acquired by purchase from the Southern Pacific Company and four claims known as the Gross No. 2, Gross No. 3, White Rock and Skyhigh Lode Mining Claim—all of which are free and clear of any liens or encumbrances, and on which claims all required assessment work has been done, and

WHEREAS, the Products Company and the stockholders represent that the Products Company owns and operates a mill [635—29] for the treatment and reduction of tungsten or scheelite ores to concentrates, and

WHEREAS, all the stock of the Tungsten Products Company is owned by the Mines Company and stockholders parties hereto own 99 percent of the stock of the Mines Company, and

WHEREAS, it is desired by the Stockholders and the Companies to obtain funds to pay debts due to the creditors of the Companies, and Taylor is willing to advance such funds upon the conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and of the Undertakings and agreements

hereinafter set forth the parties hereto do jointly and severally agree as follows:

1. The stockholders agree to form a corporation hereinafter in this agreement referred to as the "New Company." This corporation shall be organized under the laws of the State of Nevada with an authorized capital stock of \$1,500,000. The name of the new company, the charter, by-laws and organization proceedings shall be submitted to and approved by Taylor in advance of execution or adoption.

2. The Companies and the Stockholders agree to cause to be conveyed to the New Company all assets of the companies including not less than half of the authorized and issued stock of the Mill City Development Company. In exchange for such conveyances the companies shall receive all stock of the new company.

3. Such conveyances shall be executed and acknowledged according to the laws of the State of Nevada by all the directors of the companies and also by such officers of each of the companies as are designated by the by-laws as the proper [636—30] officers to execute deeds, and further such conveyances shall be lawfully authorized by at least 90% of the stockholders at the Companies, and consented to by the Creditors parties hereto.

4. The companies shall then be forthwith dissolved, and distribute their assets then consisting of stock of the New Company to their stockholders so that such stockholders shall thereupon become

stockholders in the new company on a pro rata basis.

5. The new company shall have the following as officers and directors, whose tenure of office and authority shall be subject to the laws.

OFFICERS: President David Taylor, Managing Director in charge of operations; D. L. Thane, Mine Superintendent C. W. Poole and a Secretary and Treasurer to be selected by the Directors.

DIRECTORS: David Taylor, D. R. C. Brown, L. A. Friedman, C. W. Poole and a representative of the creditors to be selected by them and approved by the Directors named. It may have such other officers as the by-laws permit and the directors appoint.

6. Such organization having been lawfully perfected Taylor agrees to purchase bonds of the new company to net Eighty Five Thousand (\$85,000.00) Dollars. This sum shall be applied as follows:

(a) \$10,000 shall be set aside as working capital.

(b) All creditors to whom is due \$500.00 or less shall be paid in full.

(c) The remainder shall then be applied pro rata to the reduction of other indebtedness. Annexed hereto is a true [637—31] and correct list of all creditors of the companies and the payment of each of the debts set forth in such schedule shall be expressly assumed by the new company in consideration of the conveyance to it of the assets of the Mines Company and of the Products Company.

7. The bonds of the new company shall bear interest at the rate of 7% per annum. payable semi-



annually, and which shall be primarily payable from the security hereinafter provided for their payment. Such bonds shall be delivered to and taken by Taylor at 95% of their face value and shall be secured by a first lien on all ore now blocked out in the mine of the Mines Company near Mill City, Nevada, and by the right to use the mill and all equipment of the Mines Company and of the Products Company to take out such ore and reduce the same to concentrates. The rights hereby conferred are to be prior to the rights or claim of creditors as against ore blocked out, or the equipment, mill or machinery until payment of the bonds hereby provided for, and interest thereon shall be secured by delivery to Taylor of concentrates produced from the ore now blocked out.

The creditors agree to defer the enforcement of any claim they may have or acquire as against the mortgaged ore, the equipment necessary to operate the same and the mill and its equipment until the New Company or Taylor shall have reduced to concentrates the mortgaged ore. Commencing such reduction shall however not be unreasonably delayed after the expiration of six months from the date hereof without the consent of Taylor and of any unpaid creditors parties hereto. Such concentrates shall be sold by Taylor at the market price and the proceeds thereof applied to the payment [638—32] of the cost of mining and producing and marketing the same and the repayment of the bonds issued for \$85,000 with interest at seven

per cent. Any deficiency shall be an obligation of the new company. Instruments approved as to form by Taylor and adequately securing the rights hereby granted, or intended to be granted, shall be duly executed and delivered by the new company and by the creditors or their duly authorized representatives coincidentally with the sale of the bonds.

8. Mining operations shall proceed as soon as the new company shall have acquired title to the mill, the mine and equipment, but at the outset preference shall be given to development work as long as thereby sufficient concentrates are produced to pay the cost thereof. If such should not prove to be the case, Taylor shall have the right to require the new company to mine the ore blocked out and standing as security for bonds sold to him and interest as aforesaid until from the proceeds of the sale of concentrates said bonds shall be fully repaid with interest. It is expressly understood and agreed that a failure to fully observe the foregoing undertaking and requirement shall be sufficient authority to Taylor to take possession of the mine, mill and equipment and operate the same by taking out and reducing to concentrates the ore to be mortgaged to him as aforesaid for the purpose of providing funds for the payment of bonds.

9. When as and if the development work shall according to the certificate of an engineer to be selected by Taylor result in 20,000 tons of ore being blocked out in the mine in addition to that now blocked out, Taylor agrees to purchase ad-

ditional bonds at 95 sufficient to liquidate such of the debts set forth in schedule "A" as are then unpaid, provided, [639—33] however that Taylor shall not be required to purchase more bonds at the above basis than will net the Company \$65,000. These additional bonds shall be secured and repaid and bear interest in like manner to the first bonds.

10. At the time of making the first bond purchase the stockholders agree to cause to be issued to Taylor for his services and his agreements herein 35% of the stock in the new company, and to deposit with ——— Trustee an additional 27% of the stock of the new company in escrow. When and as soon as either all creditors specified in Exhibit "A," hereto annexed shall have been paid in full the amount of their claims including interest, if any, or when Taylor shall have taken up bonds to net the Company the full sum of \$140,000, if so much be required, the certificate representing 27% of the stock of the new company held by ———, as Trustee shall be transferred to Taylor or upon his order. Cancelled check vouchers or receipts shall be sufficient evidence to the Trustee that the accounts have been paid and discharged, and either such checks or such receipts shall be deposited by the new company with the Trustee as fast as the same comes into the possession of the new company; likewise Taylor's cancelled check vouchers to the order of the new Company aggregating \$140,000 shall be sufficient evidence to the Trustee that Tay-

lor has purchased bonds of the new company, as herein provided, and he shall thereupon in either of such events deliver to Taylor the stock held by him in escrow. So long as he shall hold shares hereunder the Trustee shall vote the shares held by him to continue the terms of this agreement.

11. Each and all of the creditors hereby jointly and [640—34] severally agree not to take or commence any proceeding against the new company, which will in any way interfere with, or embarrass Taylor in the collection by him of his advances to the company through the mining by him of ore mortgaged to him and reducing the same in the mill.

12. Nothing herein contained shall be held or construed as preventing the directors of the new company from discontinuing mining operations if the price of sheelite or tungsten, or strikes or accidents shall render that course advisable in their judgment, provided, however, that cessation by the company from mining or milling shall not prevent Taylor from operating the mine and mill for the purpose of reducing to concentrates or mortgage to him.

13. The new company, as soon as it is organized, shall adopt this agreement in all its parts and in consideration of the advances to be made to it agree to be bound by the terms hereof as though an original party hereto.

14. It is understood and agreed and the new company shall expressly covenant to apply the



funds received from Taylor, as well as any net earnings to the reduction of the indebtedness to be assumed by the new company and set forth in Schedule "A."

15. It is further agreed that the sale of all concentrates shall be effected through Taylor, who is hereby appointed selling agent for that purpose, and until all the terms of this agreement shall be completely fulfilled.

16. It is understood that the undertaking by Taylor to purchase bonds includes the right to associate others with him and raise money as may seem to him best, the substance of his undertaking being that he hereby guarantees that said bonds [641—35] shall be purchased upon the conditions herein set forth, and that it is for such services and for such guarantee that Taylor is to receive in all 62% of the stock of the New Company.

17. All prior understandings or agreements are merged in this contract which shall express the full agreement and understanding of the parties hereto, and which shall bind and insure to the benefit of the parties and their heirs, successors, legal representatives and assigns.

IN WITNESS WHEREOF, the parties hereto, the day and year first above written, have set their respective hands and seals, or caused these presents

to be duly executed by their proper officers thereunto duly authorized.

\_\_\_\_\_, L. S.  
NEVADA HUMBOLDT TUNGSTEN  
MINES CO.

By \_\_\_\_\_,  
President.

Attest: \_\_\_\_\_,  
Secretary.

TUNGSTEN PRODUCTS COMPANY.

\_\_\_\_\_,  
President.

Attest: \_\_\_\_\_,  
Secretary.

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Humb. Tungsten M. Co., et al. Copy Agreement. Taylor & Nev. Hum. Tung. Co. and others. Plffs. Ex. No. 17. Filed Sept. 15th, 1920. T. J. Edwards, Clerk.  
[642—36]

\_\_\_\_\_  
**Plaintiff's Exhibit No. 18.**

MEMORANDUM OF AGREEMENT Between  
David Taylor, B. L. Thane and Howland Bancroft.

WHEREAS, David Taylor has this day succeeded in signing an agreement to option the prop-

erty of the Nevada Humboldt Tungsten Mines Company and affiliated corporations, copy of which option forms a part of this Agreement,

NOW, THEREFORE, it is mutually understood and agreed by and between the parties hereto that David Taylor undertakes to use his best endeavors to carry out the terms of this option and make a sale of this property, and in the event he is successful in financing the option or making a deal the proportionate interests in and to any of the profits made from the property or from a sale of the property, or from otherwise exercising his option on the property, shall be divided among the parties to this agreement on the following basis, to wit:

To David Taylor,	Sixty (60%) per cent
To B. L. Thane,	Twenty (20%) per cent.
To Howland Bancroft,	Twenty (20%) per cent.

WITNESS our hands and seals this 16th day of January, 1919.

DAVID TAYLOR. (Seal.)

B. L. THANE. (Seal.)

HOWLAND BANCROFT. (Seal.)

Witnesses:

E. E. PABST.

ROBT. C. HURLEY.

[Endorsed]: No. B-7. U. S. Dist. Court. Dist. Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Agreement. Taylor, Thane and Bancroft. Jan'y. 16-19. Plffs. Ex. No. 18. Filed September 16, 1920. T. J. Edwards, Clerk. [643—37]

**Plaintiff's Exhibit No. 19.****HOWLAND BANCROFT.**

Consulting Mining Geologist.

Suite 730 Symes Building, Denver, Colorado.

June 2, 1919.

Mr. David Taylor,  
Palace Hotel,  
San Francisco, California.

Dear Sir:

Supplementary Report, Nevada Humboldt  
Tungsten Mine.

The following telegram was sent you last evening,—

“Final assays received today Stop Results of sampling show that the total developed, partially developed and indicated ore of a commercial grade in the Nevada Humboldt Mine as at May twenty-fourth this year is eighteen thousand four hundred and seventy-seven tons Stop The average grade of this tonnage as indicated by assay returns from detailed sampling is one point sixty four tungsten trioxide Stop The above summary may be attached to and form a supplementary part of my preliminary report on this property dated February fifteenth nineteen nineteen.

**HOWLAND BANCROFT.”**



**TONNAGE AND VALUE OF INDICATED ORE:** (Developed and partially Developed.) This ore, therefore, contains 303.0228 tons WO<sub>3</sub>, of which 80% is recoverable, or 242.4182 tons WO<sub>3</sub>, which equals 24,241.8 units WO<sub>3</sub>. The total cost of mining and milling this tonnage at \$5.00 per per ton will be \$92,385. Consequently the value of this indicated tonnage is as follows:

Market Price per Unit	Gross Value of Indicated Ore	Net Value of Indicated Ore
\$ 6.00	\$145,450	\$ 53,065
7.00	169,692	77,307
8.00	193,934	101,549
9.00	218,176	125,791
10.00	242,418	150,033

[644—38]

**PROPOSED DEVELOPMENTS:** Only 24% of the development work proposed last January had been accomplished up to May 24th, of this year. A continuation of the following workings is recommended in view of the commercial ore occurrences as indicated on the assay plan, Plate 5A.

1st. The winze, below tunnel OA, (Tunnel number 2) should be sunk at least 120 feet.

2d. Level Number 1 should be extended Northeast to a point below the winze from tunnel OA. (Tunnel Number 2.)

3d. Level No. 3 should be continued to the Southwest as long as commercial ore is developed by this working.

4th. Level Number 4 should be driven to the Northeast and Southwest until the drifts are in non-commercial ore.

5th. If commercial ore is proved to exist below the last sample cut in the shaft, the shaft sinking should continue. Sampling the shaft 90 feet below level Number 4, the then bottom of the working demonstrated the same to be non-commercial below level Number 4.

GENERAL: It is again recommended that the Company Books be audited to check the actual costs of operation covering mining, milling and general expense against the cost figures submitted last January.

Respectfully,

HOWLAND BANCROFT.

CC. to B. L. Thane

HBH.

(Note: Plate No. 5-A accompanies this supplemental report.)

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Humb. Tungsten Co. et al. Bancroft's Supp. Report. Plffs. Ex. No. 19. Filed Sept. 16, 1920. T. J. Edwards, Clerk. [645—39]

**Plaintiff's Exhibit No. 20.**

(Note: See Howland Bancroft's Map re Supplementary Report.)

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**Plaintiff's Exhibit No. 21.**

**POSTAL TELEGRAPH—COMMERCIAL  
CABLES.**

Clarence H. Mackay, President.  
**TELEGRAM**

Received at the Biltmore New York City  
49 NY GL 552P 37

Denver Colo May 22

B. L. Thane Biltmore Hotel NYC

Please wire just how much preferred stock I can definitely count on your taking also if you plan to come West soon Stop If Bancrofts report favorable I can raise at least one hundred thousand dollars here.

**DAVID TAYLOR.**

[Endorsed]: No: B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Taylor to Thane, May 22. Plffs. Ex. No. 21. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

**Plaintiff's Exhibit No. 22.****WESTERN UNION TELEGRAM.**

Washington, D. C., May 23, 1919.

To David Taylor,

Street and No.—Symes Building.

Place—Denver, Colo.

Unexpectedly compelled to come to Washington to lay plans to protect our Magnesite industry which is in jeopardy on account of recent ruling of War Trade Board. Have been here for week. Expect to return to New York Sunday or Monday. Hope to leave [646—40] for West not later than end of week stop. Have worked with Poole in connection with the filing of his claim. He is making excellent progress. Will not have decision from my friends in New York before Monday stop. Have suggested to Poole he should be agreeable modify amount and time of payment under your option so that you would have more time to carry it through. If necessary to you am sure he will agree to this and recommend it to his associates. This will be helpful to you and to me because this new work will prevent me from getting back to the Coast in time to make any financial arrangements with my friends there by the first of the month. If I do not succeed in raising extra money in New York advise Bancroft my movements.

B. L. THANE.



[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of Nevada. David Taylor vs. Nev. Hum. Tung. M. Co. et al. Thane to Taylor, May 23d, 19. Plffs. Ex. No. 22. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 23.**

**WESTERN UNION TELEGRAM.**

Received at Lovelock, Nev.

26SF W 59 Blue

Denver Colo 1232 P May 23-19

Nevada Humboldt Tungsten Mines Co

Lovelock Nev

Bancrofts estimate satisfactory Stop Have you made arrangements have bills San Francisco promptly Stop Have auditors wire us approximate indebtedness excluding amount due consolidated ores or me personally Stop Has Bayless completed examination title Stop Our lawyer Jackson due Lovelock Wednesday night or San Francisco Thursday night would Murrish prefer have him stop [647-41] Lovelock on way out or meet him San Francisco.

DAVID TAYLOR,  
1259P

[Endorsed]: No. B.-7, U. S. Dist. Court of Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Taylor to Nev. H. T. M. Co. May 23/19. Plff's Ex. No. 23. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

**Plaintiff's Exhibit No. 24.**

WESTERN UNION TELEGRAM.  
RECEIVED AT DB13NYOB 12 Q NEWYORK  
11A MAY 7

L. A. Friedman,

Hotel Lasalle, Chgo.

Think money assured hope have funds San Francisco ten days to complete deal.

DAVID TAYLOR,  
1050A.

[Endorsed]: No. B-7. W. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Taylor to Friedman, May 7. Plffs. Ex. 24. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 25.**

WESTERN UNION TELEGRAM.  
Received at Commercial Nat'l Bank Bldg., 14th &  
G. Sts., N. W. Washington, D. C.  
A33NY 226 NL 70

BI New York, NY., May 28.

1919 May 29, AM., 3 06

C. W. Poole,

The New Willard Hotel Washington, DC.

Wire from Taylor advises he has arranged for one hundred twenty [648—42] five thousand and is very much concerned because I do not wire him twenty five thousand immediately stop It is impossible for me to arrange for this amount of money

without actually being in San Francisco as I had made no preparation for this when leaving for New York and as you know had no expectation at that time of having to take up this additional work in Washington which delayed my return to the coast it is for this reason I asked you to arrange with your associates for an extension of time on the balance of twenty five thousand until I get to the coast in case this eastern group with whom I have been negotiating decided to not take up this minority interest stop I advised Taylor accordingly but he feels your associates would not be willing to grant this extension particularly Murrish stop If Taylor makes a payment of one hundred twenty five thousand certainly cannot see why an extension of thirty days at the most on the twenty five thousand would not be agreeable stop Will you please advise me immediately whether or not you can arrange this with your associates so Taylor can go on and make his payment also please arrange so Taylor is advised definitely one way or other.

B. L. THANE.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Thane to Poole. May 29/19. Plffs. Ex. No. 25. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

**Plaintiff's Exhibit No. 26.****WESTERN UNION TELEGRAM.**

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always Open.

1919 May 26 PM 12 25

B 106A 103 1/75

WA Washington, DC., 1237P 26 [649-43]  
David Taylor,  
Symes Bldg., Denver, Colo.

Thane left for New York last night has not yet raised money for his part but expects to get it in New York to-day if fails there is certain to get it when he returns west think you and our people can arrange whatever time necessary to enable him to get money in Frisco will leave here as soon as Lovelock sends data necessary for questionnaire Loring's man is here and am working with him stop Advise your wire Lovelock to hurry data with Loring's aid hope to be able to arrange for final hearing in Reno believe our case best of all fungsten claims.

C. W. POOLE.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Poole to Taylor. May 26/19. Plffs. Ex. No. 26. Filed Sept. 17, 1920. T. J. Edwards.



**Plaintiff's Exhibit No. 27.**

	Pd	Owng
May 16 T J & B Legal .....	1000.00	
June 6 Wm. Bayless 400.00 .....	400.00	675.00
(Additional 600.00 & expenses service at mine & SF)		
Apr 25/5/23. DT Trav Ex D-L-NY. ....	653.14	
5/30/6/10. DT DL & SF E D- ...	541.82	
July 3. <del>Jackson</del> TJB&M .....	1500.00	
June 19. H B-2nd exam. expense	297.06	
Fee approx .....	1000.00	
(Total 2350.00 division later)		
July 11. Water assays 2nd ex ....	206.00	
Maps .....	15.00	
Telegrams		
Jackson Ex .....	500.00	
[650—44]		

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Taylor's Account. Plffs. Ex. No. 27. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

**Plaintiff's Exhibit No. 28.****POSTAL TELEGRAPH—COMMERCIAL CABLES**

Clarence H. Mackay, President  
TELEGRAM.

5roks 94' NL. 92oqam 10

Reno, Nev. Aug. 10

W. J. LORING  
SANFRANCISCO

Rec'd. Aug. 11, 1919.

1693 Aug. 10, '19.

Ans'd ———

W. J. Loring,

Crocker Bldg Sanfrancisco.

Reno newspaper reports dispatch from Imlay stating you have bought Friedman tungsten interests in Millecity district would appreciate your wiring early monday as to what of any Nevada Humboldt interests you have bought. The companies and stockholders owe me considerable money and my attorneys consider I have good case for compelling present stockholders assign to me control of stock of both companies or as alternative heavy damages. My actions will largely depend on what if any interest you may have as I don't want involve you in this mess wire care George Thatcher Reno.

DAVID TAYLOR.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist Nevada. David Taylor vs. Nev. Hum. T. M. Co.

et al. Taylor to Loring. Aug. 10, 19. Plffs. Ex. No. 28. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 29.**

**WESTERN UNION TELEGRAM.**

Received at 127 N. Center St., Reno Nev. Always Open.

1919 Aug. 11 PM 1 05

Ai09 SF 7

MT San Francisco, Calif., 1253 P 11

[651—45]

David Taylor,

Bare Geo. Thatcher, Reno, Nev.

I hold option on Nevada Humboldt interests

W. J. LORING.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Loring to Taylor, Aug. 11/19. Plffs. Ex. No. 29. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 30.**

**MEMORANDUM OF AGREEMENT** Between David Taylor, B. L. Thane and Howland Bancroft.

WHEREAS, David Taylor has this day succeeded in signing an agreement to option the property of the Nevada Humboldt Tungsten Mines Company

and affiliated corporations, copy of which option forms a part of this agreement.

NOW, THEREFORE, it is mutually understood and agreed by and between the parties hereto that David Taylor undertakes to use his best endeavors to carry out the terms of this option and make a sale of this property, and in the event he is successful in financing the option or making a deal the proportionate interest in and to any of the profits made from the property or from a sale of the property, or from otherwise exercising his option on the property, shall be divided among the parties to this agreement on the following basis, to wit:

To David Taylor, sixty (60%) per cent.

To B. L. Thane, Twenty (20%) per cent.

To Howland Bancroft, Twenty (20%) per cent.

WITNESS our hands and seals this 16th day of January, 1919. [652—46]

DAVID TAYLOR. (Seal)

B. L. THANE. (Seal)

HOWLAND BANCROFT. (Seal)

Witnesses:

G. E. PABST.

ROBT. C. HURLEY.

Sept. 11, 1920.

I hereby release to David Taylor all claims and rights that I have under the foregoing contract, consideration ten (\$10.00) acknowledged.

B. L. THANE.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs Nev. Hum. T. M. Co.



et al. Agreement—Taylor, Thane and Bancroft.  
Plffs. Ex. No. 30. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 31.**

**CONSOLIDATED ORES CO.**

David Taylor, President.

730 Symes Building,

Denver, Colo.

Reno, Nevada, Aug. 10, 1919.

W. J. Loring, Esq.,

San Francisco, Cal.

Dear Mr. Loring:

You were probably surprised to receive my telegram. The telegram, however, was occasioned by an article appearing *the* the Reno Gazette last evening, a clipping of which, I enclose herewith. I have since been informed that the article not authentic, but in view of our talk in New York, when I had the pleasure of breakfasting with you, in all fairness, I thought it proper to advise you of the situation. [653—47]

I am leaving to-night for Denver and am then going to take a short fishing trip near Aspen, Colorado, and hope to come back to find tungsten \$25.00 per unit and going strong.

Faithfully yours,

(S.) DAVID TAYLOR.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co.

et al. Taylor to Loring. Aug. 10/19. Plffs. Ex. No. 31. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 32.**

**CONSOLIDATED ORES CO.**

David Taylor, President.

730 Symes Building.

Denver, Colorado, April 17, 1919.

Crucible Steel Co. of America,

Pittsburgh, Pa.

Dear sirs:

I am interested in a company owning a scheelite property in Nevada. The ground was bought from the Southern Pacific Railroad Company and has been fully paid for. There is a 120-ton daily capacity mill, fully equipped with concentrating machinery, roaster and magnetic separators, which has been running satisfactorily and economically for the past three months.

You are of course familiar with the cost of producing tungsten in the United States, and, I believe, will agree with me that no large amount of domestic ores can be delivered at New York for less than \$10.00 per unit. On the other hand, we can lay down concentrates from this property in New York and make a profit at \$5.00 per unit  $WO_3$ , having in fact done so even under present high cost of labor, freight and supplies. [654—48]

The company has had to borrow money in order to construct this mill and to operate during the past

few months. It is necessary for us to raise about \$200,000.00 in order to pay off the indebtedness. Of this amount I have personally advanced \$80,000.00, which is secured by 150 tons of concentrates, 50 tons in a Harrisburg Warehouse; 50 tons now being sampled at Salt Lake City; and 50 tons being shipped from the mine within the next few days.

The property has been examined by Howland Bancroft, Mining Geologist of Denver, one of the best and most conservative judges of a mine in this country. He has pronounced it a good commercial proposition even at a price of \$6.93 per unit  $WO_3$  delivered in the East, which is the average of the price of tungsten for the years 1904 to 1913 inclusive.

At the time of Mr. Bancroft's examination the end of January, he recommended a plan for development which we have been following out. This plan, when completed, is expected to show about 125,000 tons of ore containing 1.4% recoverable  $WO_3$  within arbitrary limits of 380 feet southwest and 250 feet northeast from the main shaft, and additional depth of 360 feet. So far, the shaft has been sunk 180 feet below the depth at the time of Bancroft's examination and one of the upper levels extended on each side beyond Mr. Bancroft's arbitrary side limits. The result is now an assured minimum of 43,000 tons of ore, part of which is developed on three sides and part on two sides. This is equivalent to 850 tons of 70% concentrates, or 60,200 units  $WO_3$ .

The above work is all done on one vein, and we have another parallel vein with good tungsten showings on the surface [655—49] which has not yet been even prospected at depth. Altogether there is a very good chance of our having at least 200,000 tons of ore to put through the mill.

From the standpoint of mining investment, the proposition is thoroughly sound and will bear a most rigid investigation.

Believing that you would like to be assured ahead of a supply of your ore requirements, I should like to know if your company would advance \$125,000.00 as payment on account of concentrates to be delivered at the rate of 25 tons per month.

To provide for the repayment, we could agree upon a definite total price per unit which you would pay for the concentrates, for instance, \$9.00. You would pay us for all concentrates delivered at \$5.00 per unit and credit \$4.00 per unit against the \$125,000.00 advanced by you with interest, until the full amount was repaid.

The material now in the Warehouse averages 71%  $\text{WO}_3$ ; .5% sulphur; .02% phosphorus; .02% copper; and no tin. The future concentrates will be lower in sulphur as the roaster is now operating smoothly.

The purpose of this letter is merely to ascertain if you would be interested in such a general proposition, understanding of course, that the details would have to be worked out to our mutual satisfaction. We have several other plans on foot for financing which may or may not work out, there-



fore, without further discussion, this is not to be considered a firm offer on my part.

Yours very truly,

---

President. [656—50]

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Taylor to Crucible Steel Co. April 17/19. Plffs. Ex. No. 32. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 33.**

**CONSOLIDATED ORES CO.**

David Taylor, President,

730 Symes Building,

Denver, Colorado, April 17, 1919.

Mr. Roy C. McKenna,

Vanadium-Alloys Steel Co.,

Latrobe, Pa.

Dear sir:

I am interested in a company owning a scheelite property in Nevada. The ground was bought from the Southern Pacific Railroad Company and has been fully paid for. There is a 120-ton daily capacity mill, fully equipped with concentrating machinery, roaster and magnetic separators, which has been running satisfactorily for the past three months.

You are of course familiar with the cost of producing tungsten in the United States, and, I believe, will agree with me that no large amount of

domestic ores can be delivered at New York for less than \$1,000 per unit. On the other hand, we can lay down concentrates from this property in New York and make a profit at \$5.00 per unit  $\text{WO}_3$ , having in fact done so even under present high cost of labor, freight and supplies.

The company has had to borrow money in order to construct this mill and to operate during the past few months. It [657—51] is necessary for us to raise promptly about \$200,000.00 in order to pay off the indebtedness. Of this amount I have personally advanced \$80,000.00, which is secured by 150 tons of concentrates, 50 tons in a Harrisburg Warehouse; 50 tons now being sampled at Salt Lake City; and 50 tons being shipped from the mine within the next few days.

The property has been examined by Howland Bancroft, Mining Geologist of Denver, one of the best and most conservative judges of a mine in this country. He has pronounced it a good commercial proposition even at a price of \$6.93 per unit  $\text{WO}_3$  delivered in the East, which is the average of the price of tungsten for the years 1904 to 1913 inclusive.

At the time of Mr. Bancroft's examination the end of January, he recommended a plan for development which we have been following out. This plan, when completed, is expected to show about 125,000 tons of ore containing 1.4% recoverable  $\text{WO}_3$  within arbitrary limits of 380 feet southwest and 250 feet northeast from the main shaft, and additional depth of 360 feet. So far, the shaft has

been sunk 180 feet below the depth at the time of Bancroft's examination and one of the upper levels extended on each side beyond Mr. Bancroft's arbitrary side limits. The result is now an assured minimum of 43,000 tons of ore, part of which is developed on three sides and part on two sides. This is equivalent to 860 tons of 70% concentrates, or 60,200 units  $WO_3$ .

The above work is all done on one vein, and we have another parallel vein with good tungsten showings on the surface which has not yet been even prospected at depth. Altogether there is a very good chance of our having at least 200,000 tons of ore to put through the mill. [658—52]

From the standpoint of mining investment, the proposition is thoroughly sound and will bear a most rigid investigation.

Believing that you would like to be assured ahead of a supply of your ore requirements, I should like to know if your Company would advance \$125,000.00 as payment on account of concentrates to be delivered at the rate of 25 tons per month.

To provide for the repayment, we could agree upon a definite total price per unit which you would pay for the concentrates, for instance \$9.00. You would pay us for all concentrates delivered at \$5.00 per unit and credit \$4.00 per unit against the \$125,000.00 advanced by you with interest, until the full amount was repaid.

The material now in the Warehouse averages 71%  $WO_3$ ; .5% sulphur; .02% phosphorus; .02% copper; and no tin. The future concentrates will

be lower in sulphur as the roaster is now operating smoothly.

The purpose of this letter is merely to ascertain if you would be interested in such a general proposition, understanding of course that the details would have to be worked out to our mutual satisfaction. We have several other plans on foot for financing which may or may not work out, therefore, without further discussion, this is not to be considered a firm offer on my part.

Yours very truly,

---

President.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Taylor to McKenna, April 17/19. Plffs. Ex. No. 33. Filed Sept. 17, 1920. T. J. Edwards, Clerk. [659—53]

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**Plaintiff's Exhibit No. 34.**

**WESTERN UNION TELEGRAM.**

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always open.

1919 Jan 22 AM 6 49

46SF 125 NL 1/70

A

Tungsten Nev Jan 21

David Taylor

730 Symes Bldg. Denver Colo

Will make every endeavor to reduce sulphur contents and assure you can be done although will



probably take longer than tenth February do to crudeness of our apparatus Stop Development as outlined by Bancroft will necessitate roaster as practically all development will be in sulphide zone Stop Agree with his plan of development Stop Bancroft is wiring Brunton requesting him investigate roaster made in Denver if satisfactory will purchase and install at once Stop This will make it possible to give low sulphur contents greater shipment at a low cost Stop Suggest you offer our scheelite Hudson Reduction Company who may accept without penalty for high sulphur contents thus save time and expense on this first shipment Stop All agree with your arrangement with Lipman.

C. W. POOLE.

[Endorsed]: No. B-7. U. S. Dist Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Poole to Taylor, Jan'y 22/19. Plffs. Ex. No. 34. Filed Sept. 17, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 35.**

NEVADA HUMBOLDT TUNGSTEN MINES  
CO.

Mines Located Near Mill City, Humboldt County,  
Nevada. Office, Lovelock, Nevada.

Lovelock, Nevada, April 9th, 1919.

[660—54]

Captain David Taylor,  
730 Symes Bldg.,  
Denver, Colo.

Dear Captain Taylor:

Upon returning home, I found a lot of work

piled up pertaining to the new consolidation at Rochester, and which has taken my entire time until to-day.

I, however, am preparing copies of contract, by-laws, Articles of Incorporation, etc., and will have them go forward sometime this week, possibly I might be able to get the biggest portion off on the 10th.

As per my wire of the other day referring to Lot #36 containing 2.06 sulphur contents will state that this was probably due to the fact of the superintendent at the mine crowding the roaster above its capacity, which we are sorry has happened. We however, hope that you will be able to sell the entire 100 tons which now has been shipped to your client, and that it will not be necessary to go to the expense of having this lot returned and re-roasted. You, however, use your judgment, and if you feel that the sulphur contents of this lot will interfere with the sale of the product, kindly have same returned to us and we will re-roast this lot number and include same in other car to be shipped later on.

Mr. Poole left for Tungsten to-day and probably will be there for a day or two and when he returns he no doubt will write you fully regarding conditions.

Referring to my telegram of the 5th instant stating that we had an offer of \$9.00 per unit from some Pittsburg people will state that the offer was made us by Mr. Manson, president [661—55] of the Western Ore Purchasing Company at Reno, Nev-

ada. This offer was made by Mr. Manson to Mr. Friedman during the time we were in Denver, but that he preferred we should make him an offer to sell 100 tons of our product at \$9.00 per unit to be delivered within ten days. After conferring with you as to your wishes, we asked Mr. Manson to divulge the name of his client if consistent with his views. He, however, stated that he preferred not to do this, and we wired you accordingly—whether or not this was a bona fide offer or whether it was merely a feeler to ascertain our willingness to dispose of scheelite at \$9.00 per unit, we do not know.

We are in hopes and trust that the market is really picking up and that consumers are now offering \$9.00 for high grade material, and if this is true we feel that the situation has improved and that it really looks encouraging.

Everything else is going along nicely with us, and I trust this communication finds the same with you. Kind personal regards from the writer.

Yours very truly,

R. NENZEL.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. 4 Letters: Murrish to Pettigrew, Nenzel to Pettigrew, Friedman to Taylor, Nenzel to Taylor. Plffs. Ex. No. 35, for Identification. Filed Sept 17, 1920. T. J. Edwards, Clerk. Admitted, after withdrawing first 3 letters above named. Sept. 20th.

**Plaintiff's Exhibit No. 36.**

(Note: Introduced for identification and later withdrawn.) [662—56]

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**Plaintiff's Exhibit No. 37.**

August 22, 1919.

Nevada Humboldt Tungsten Mines Co., L. A. Friedman, Lena J. Friedman, C. W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and H. J. Murrish, as stockholders of the Nevada Humboldt Tungsten Mines Company, a corporation, and to the Board of Directors of said Nevada Humboldt Tungsten Mines Company:

You are hereby notified that David Taylor, a stockholder of the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, does hereby protest against the directors or stockholders of said corporation entering into an agreement of purchase and sale of all of the property and assets of the Company, and ratifying any documents executed in connection therewith, and does hereby protest against the holding of a meeting of stockholders of said corporation on August 23d, 1919, for the purpose aforesaid, and does hereby object to the stockholders of said corporation ratifying the action of the directors of said corporation in entering into any agreement of purchase and sale of all of the property and assets of the Nevada Humboldt Tungsten Mines Company,



and ratifying any documents executed in connection therewith. The said David Taylor, as a stockholder, objects and protests against the said action on the grounds that the same is unwarranted and is the exercise of powers not granted to the directors of the corporation or to its stockholders, and upon the further ground that said meeting, which is called for the 23d day of August, 1919, is called without authority of law and is not, and will not be, held in accordance with the laws of the [663—57] State of Nevada and the Articles of Incorporation and By-laws of said corporation, the Nevada Humboldt Tungsten Mines Company, and is beyond the authority of the directors or of the stockholders under the laws of the State of Nevada, the Articles of Incorporation and By-laws of the Nevada Humboldt Tungsten Mines Company, and objects upon the further ground to the stockholders ratifying at said meeting the action of the directors of said corporation in entering into any agreement of purchase and sale of all of the property and assets of the Company and ratifying any documents executed in connection therewith, for the reason that no proper, sufficient or adequate notice has been given to the stockholders of said meeting of stockholders so to be held on the 23d day of August, 1919, in accordance with the requirements of the laws of the State of Nevada, and Articles of Incorporation and By-laws of the corporation.

Yours very truly,

DAVID TAYLOR,

By \_\_\_\_\_,

His Attorney and Proxy.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 37. Filed Sept 17, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Dep.

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**Plaintiff's Exhibit No. 38.**

To the Nevada Humboldt Tungsten Mines Company, a Corporation, and to L. A. Friedman, R. Nenzel, H. J. Murrish, C. H. Jones and C. W. Poole, the Board of Directors of said Nevada Humboldt Tungsten Mines Company:

The undersigned, a stockholder of the Nevada Humboldt Tungsten Mines Company, hereby demands that the Nevada Humboldt [664—58] Tungsten Mines Company and its Board of Directors immediately commence an action in the proper courts, or take such other steps as may be necessary, to set aside and to have declared null and void all conveyances, deeds and assignments, and bills of sale conveying all of the assets of said corporation to W. J. Loring; said conveyances having been executed pursuant to a contract dated on the 16th day of August, 1919, by and between the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, parties of the first part, and W. J. Loring, party of the second part; said conveyances having been made to said Loring pursuant to said contract, all of said contracts and said actions more fully appearing in the minutes of a special meeting of Directors held at Lovelock,

Nevada, on August 16, 1919, and the minutes of a special meeting of stockholders held on August 23, 1919, at 2:00 o'clock P. M. at Lovelock, Nevada.

Said demand is made upon the grounds that said contract and the deeds and conveyances made pursuant thereto were made by said corporation and its said officers without authority; that the meeting of stockholders held on the 23d day of August, 1919, was held without giving proper notice thereof in accordance with the laws of the State of Nevada, and the By-laws and Articles of Incorporation of said Nevada Humboldt Tungsten Mines Company, and that notice thereof was insufficient to appraise the stockholders of the objects and purposes of said meeting.

The undersigned further demands that the Board of Directors commence such action or suit or take such other steps as may be necessary to set aside, and to have declared null and void, the action of the Board of Directors of the Nevada Humboldt Tungsten [665—59] Mines Company, taken at its special meeting of said Board of Directors held on the 16th day of August, 1919, wherein and whereby the President and Secretary were authorized to execute the contract of August 16th, all of which more fully appears in the minutes of said meeting now in the hands of the Secretary of said Company, and to set aside said contract made by said officers pursuant to the resolution and authority of said meeting of said Board of Directors.

Dated: this 26th day of September, 1919.

Yours truly,

DAVID TAYLOR.

By GEO. B. THATCHER,

His Attorney in Fact.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 38. Filed Sept. 17, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

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**Plaintiff's Exhibit No. 39.**

To L. A. Friedman, J. T. Goodin, C. H. Jones, H. J. Murrish, R. Nenzel, Gertrude K. Olfers, V. A. Twigg, Frank Carlstrom, C. W. Poole and Lena Friedman:

The undersigned, a stockholder of the Nevada Humboldt Tungsten Mines Company, a corporation under the laws of Nevada, does hereby demand that you, as stockholders, immediately meet and set aside and rescind the action whereby you purported to authorize the sale of all of the assets of the said corporation to W. J. Loring; said action having been taken at an alleged meeting of stockholders on August 23, 1919, at 2:00 o'clock, P. M., all of which is evidenced by the minutes of said meeting in the hands of your secretary, R. Nenzel; and that you set [666—60] aside all action that you took at the said meeting; and that, if necessary, you commence such appropriate suit or action as may be



necessary to set aside all actions which you took at said meeting.

This demand is made upon the grounds that no adequate or proper notice of the objects and purposes of the said meeting was given to the stockholders, and that notice thereof of said meeting was not given as required by the laws of the State of Nevada, the Articles of Incorporation or By-laws of said Nevada Humboldt Tungsten Mines Company.

Dated: this 26th day of September, 1919.

Yours truly,

DAVID TAYLOR,

By Geo. B. Thatcher,

His Attorney in Fact.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Plffs. Exhibit No. 39. Filed Sept. 17-1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

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**Plaintiff's Exhibit No. 40.**

(Note: See next page, page 854, for Exhibit No. 40.)

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of Nevada. David Taylor vs. Nev. Humb. T. M. Co. et al. Stocks & Bonds purchased and sold by Taylor. Plffs. Ex. No. 40. Filed Sept. 20, 1920. T. J. Edwards, Clerk. [667—61]

Date Sold. 1919	Loss.	Profit	Date Bought	BONDS. Net Cost	Net Sale Price.	Par.	Quantity.	Description.
May 16	\$551.25		May 21, 1916	\$4870.00	\$4318.75	\$1000	5	Bonds and Notes.
16		78.13	June 9, 17	4900.00	4978.13	1000	5	Union Pacific 1st Mortgage.
16	337.75		June 11, 17	4991.25	4653.50	1000	5	American Foreign Securities.
16		62.50	July 14, 17	4106.25	4168.75	1000	5	Detroit Edison 5's.
16		157.50	Jan. 15, 18	4817.50	4975.00	1000	5	Southern Pacific Convertible 4's.
21	44.43		Apr. 27, 18	1000.00	955.57	1000	1	Cuban American Sugar 6% notes.
16	229.25		Oct. 11, 18	5000.00	4700.75	1000	5	3d Liberty Loan.
				STOCKS.				4th Liberty Loan.
16		20.25	Apr. 26, 16	2753.13	2773.38	100	25	Central Leather, Pfd.
16	720.75		Aug. 29, 16	5562.50	4841.75	100	50	American Light & Traction Pfd.
14	72.00		Aug. 29, 16	5881.25	5809.25	100	50	American Car & Foundry Pfd.
16	1297.00		Oct. 17, 16	6775.00	5478.00	100	50	Minn., St. Paul & S. St. Marie, Pfd.
16		233.33	Dec. 7, 16	5751.88	5985.21	100	66	General Motor, Pfd.
14			(Apr. 5, 16	5850.50)		100	50	U. S. Steel Pfd.
14	307.00		(Feb. 17, 17	5887.50)	11431.00	100	50	U. S. Steel, Pfd.
14		140.50	May 25, 17	5712.50	5853.00	100	50	International Harvester, Pfd.
14		53.00	June 26, 17	5856.25	5909.25	100	50	American Sugar, Pfd.
16	973.00		Oct. 8, 17	6607.25	5634.25	100	50	Bethlehem Steel, 8% Pfd.
16	94.88		Feb. 2, 16	2212.50)		100	25)	
			Apr. 24, 16	2254.13)	4371.75	100	25)	Western Union Tel. Co. Com.
16	597.25		Apr. 26, 16	3189.38	2592.13	100	25	Amer. Tel. & Tel. Co. Com.
16	582.25		Apr. 26, 16	2836.25	2254.00	50	50	Pennsylvania R. R. Com.
16		90.50	June 8, 18	4943.75	5034.25	100	5	U. S. Steel Corp. Com.
16		118.50	Nov. 6, 18	9337.50	9456.00	100	100	Atcheson & Topeka & Santa Fe R. R. Com.
	\$5876.81	\$954.21		\$111096.27	\$106173.67			
		Net Loss on	Total Sales.....	\$4922.60				

**Plaintiff's Exhibit No. 41.**

No. 474                      New York, May 28th, 1919.

THE NEW YORK TRUST COMPANY.

Pay to the order of David Taylor Twenty five thousand and no/100 Dollars.

\$25000 00/100

F. M. TAYLOR.

[Endorsed]: Pay to order of the New York Trust Co. (Signed) David Taylor. May 28/19. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. H. T. M. Co., et al. F. M. Taylor, check. Plffs. No. 41. Filed Sept. 20, 1920. T. J. Edwards, Clerk. B-7. Plffs. 41.

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**Plaintiff's Exhibit No. 42.**

POSTAL TELEGRAPH—COMMERCIAL  
CABLES.

Clarence H. Mackay, President  
TELEGRAM.

Received at Main Office Ernest & Cranner Building  
920 17th Street Denver, Colo. Telephone:  
Main 4600

File                      67                      X33

Wells Fargo Bank                      Escrow  
Taylor

73SFS                      52 COLL 1252P

WF Sanfran Cal May 28-19

DAVID TAYLOR

730 Symes Bld Denver Colo

Referring your telegram twenty-seventh New

York check will not be satisfactory our New York correspondent National Bank of Commerce you may deposit funds with them for our credit for your account Stop upon receipt of telegraphic advice from National Bank of Commerce we will apply amount here in accordance with your instructions

WELLS FARGO NATL BANK [669—63]

POSTAL TELEGRAPH—COMMERCIAL  
CABLES

Clarence H. Mackay, President

TELEGRAM

Night Lettergram XXXX

Paid Night Letter—4:30 PM

Denver Colorado May 27, 1919.

Wells Fargo Nevada National Bank

San Francisco,

California

Expect to make payment amounting to about one hundred fifty thousand dollars on Nevada Humboldt stock now held in Escrow by you June second stop Will it be satisfactory if New York Trust Company wires you that they will honor my check on them payable to you for that amount or do you prefer having them establish credit in my name with your New York correspondent If so please wire promptly name of your New York correspondent

DAVID TAYLOR.

Chg. Consolidated Ores Co 730 Symes Bldg,  
Denver



[Endorsed]: B-7. U. S. Dist. Court, Dist. Nevada, David Taylor vs. Nev. Humb. T. M. Co. et al. Wells Fargo Bank to Taylor & Taylor to W. F. Bank. May 27-8/19. Plffs. Ex. No. 42. Filed Sept. 20, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 43.**

New York, May 12, 1919.

The New York Trust Company,  
New York City.

Gentlemen:—

I wish to borrow \$40,000 for ninety days on the following security:

45 tons Tungsten (Scheelite) Concentrates 65%  
W03 [670—64] 55 ton Tungsten (Scheelite) Concentrates 61% W03.

These Concentrates are in transit from Utah Sampling Company, Salt Lake City, Utah, to Keystone Warehouse, Harrisburg, Pa. They have been sampled and weighed by the Utah Sampling Company and analyzed by Ledoux & Company.

Approximately similar grade Concentrates were sold by me last week for a price of \$598.00 a ton, or \$9.50 per unit W03. The loan requested is on the valuation basis of \$6.35 per unit.

I shall not need the money for about fifteen days, at which time I propose to attach to my note either Railroad bills of lading or negotiable warehouse receipt in case material has arrived at warehouse, also appraisers certificates of weight and analysis. The

material will be stored in your name.

Yours very truly,

THE NEW YORK TRUST COMPANY.

OTTO T. BANNARD,

Chairman of the Board.

MORTIMER N. BUCKNER,

President.

26 Broad Street, New York, May 15, 1919.

David Taylor, Esq.,

730 Symes Building,

Denver Colo.

My dear Mr. Taylor:—

Referring to your letter of the 12th instant and as stated to you yesterday we will be glad to loan you \$40,000 for ninety days at 6% on the following—  
45 tons Tungsten (Scheelite) Concentrates 65% WO<sub>3</sub>. 55 tons Tungsten (Scheelite) Concentrates 61% WO<sub>3</sub>. [671—65]

We understand that you will attach to your note either railroad bills of lading or negotiable warehouse receipts with appraisers certificates of weight and analysis covering the Tungsten concentrates in question.

Yours very truly,

M. N. BUCKNER,

President.

[Endorsed]: No. B-7, U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. H. T. M. Co. et al. Correspondence, Taylor to N. Y. Trust Co. Plffs. Ex. No. 43. Filed Sept. 20, 1920. T. J. Edwards, Clerk.

**Plaintiff's Exhibit No. 44.**

NEVADA HUMBOLDT TUNGSTEN  
MINES CO.

Mines Located Near Mill City, Humboldt County,  
Nevada.

Office, Lovelock Nevada.

Lovelock, Nevada, April 17th, 1919.

Captain David Taylor,  
730 Symes Building,  
Denver, Colorado.

My dear Mr. Taylor:

Having released my 250,000 shares of capital stock of the Nevada Humboldt Tungsten Mines Company which was up as collateral in the Reno National Bank they yesterday forwarded this stock to the Wells Fargo Nevada National Bank of San Francisco to be placed in escrow with the balance of it, and I would presume that you hear from the Wells Fargo Nevada National Bank to that effect, although they might consider it unnecessary for them to do so, and therefore, I am writing you to this effect today.

It seems that our tungsten mine is getting bigger [672—66] and better every day, but it seems that there is little price for tungsten, although I am satisfied I could have sold a carload at \$9.00 at the time we wired you as to whether we would be at liberty to do so, and I saw your letter to Frank Manson and also your letter here in which you referred to Mr. Daft, the broker, and he is the man with whom Mr. Manson was corresponding by wire, and no doubt he would just as soon do business with you

direct as with Manson, and therefore, I think you are absolutely right in taking the matter up personally, and I hope you will be successful in selling all of this product at a good price.

With kind personal regards, and my best wishes for your continued success, I am,

Yours very truly,

L. A. FRIEDMAN.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. H. T. M. Co. et al. Friedman to Taylor, April 17/19. Plffs. Ex. No. 44. Filed Sept. 20, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 45.**

Return in five days to Nevada Humboldt Tungsten Mines Co., Lovelock, Nevada.

(2¢ postage Stamp)

(Postmark: Lovelocks Aug. 18  
7PM NEV)

Mr. David Taylor,  
730 Symes Bldg.,  
Denver, Colo.

NOTICE IS HEREBY GIVEN that a special meeting of the stockholders of the Nevada Humboldt Tungsten Mines Company, will be held at the office of the company in Lovelock, Nevada, on Saturday, [673—67] August 23d, 1919, at 2 o'clock, P. M. for the purpose of ratifying the action of the Directors of said corporation in entering into an agreement of purchase and sale of all the property



and assets of the company and ratifying any documents executed in connection therewith, and the consideration of any other matters relative thereto that may properly come before the meeting.

Dated, Lovelock, Nevada, August 16th, 1919.

By order of the President.

R. NENZEL,  
Secretary.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Notice of Special Meeting of Stockholders, Tungsten Co. This with envelope Plffs. Ex. No. 45. Filed Sept. 20, 1920. T. J. Edwards, Clerk.

[Endorsed]: (On Envelope) No. B-7. U. S. Dist. Court, Dist. Nevada. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. This envelope with enclosed notice, Plffs. Ex. No. 45.

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**Plaintiff's Exhibit No. 46.**

**MINUTES OF A SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF NEVADA  
HUMBOLDT TUNGSTEN MINES COM-  
PANY.**

Held at Lovelock, Nevada. August 16th, 1919, at  
10:00 o'clock, P. M.

**WAIVER OF NOTICE:**

We, the undersigned, being all of the Directors of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by vir-

tue of the laws of the State of Nevada, do hereby waive notice of the time, place and purpose of holding a special meeting of the Board of Directors of said Company, and do hereby designate and fix the 16th day of August, [674—68] 1919, at 10:00 o'clock P. M. as the time at which said meeting shall be held, and the office of the Company in the City of Lovelock, Pershing County, Nevada, as the place of such meeting, and we do hereby consent that any and all business of any kind or nature which pertains to the business or interests of the Company may be considered and acted upon at said meeting.

WITNESS OUR HANDS this 16th day of August, 1919.

L. A. FRIEDMAN.

R. NENZEL.

H. J. MURRISH.

C. H. JONES.

C. W. POOLE.

Filed Aug. 16, 1919.

R. NENZEL,

Secretary.

Pursuant to the above and foregoing written Waiver of Notice, a special meeting of the Board of Directors of Nevada Humboldt Tungsten Mines Company, was held at 10:00 o'clock, P. M., the 16th day of August, 1919 at the office of the Company in Lovelock Pershing County, Nevada.

Present, all of the Directors, namely: L. A. Friedman, R. Nenzel, H. J. Murrish, C. H. Jones and C. W. Poole.

The meeting was called to order by President L. A. Friedman, who stated that the principal business to come before the meeting was the acceptance or rejection of an offer to purchase the Company's real and personal property. On motion seconded and carried, the following Resolution was adopted:

RESOLVED, that the regular rules be, and they are [675—69] hereby suspended and that the Board proceed immediately to consider the special business to come before it.

W. J. Loring being personally present stated to the Board that he desired to purchase the entire property and holdings of the Company and the entire property of the Tungsten Products Company, and that he was ready and willing to pay the sum of \$333,333.33 for the properties of both companies. Mr. Loring presented to the Board a proposed contract of sale between this Company and Tungsten Products Company on the one part and W. J. Loring, on the other part. Thereupon H. J. Murrish offered the following resolution and moved its adoption:

WHEREAS, W. J. Loring has made an offer to this Company jointly with Tungsten Products Company to purchase the real and personal properties of this corporation and the real and personal property of said Tungsten Company for the sum of \$333,333.33 and has offered to enter into a binding sale agreement with this corporation, and

WHEREAS, we, the Directors of Nevada Humboldt Tungsten Mines Company are familiar with the properties of both corporations, and

WHEREAS, we, the Directors, deem that the offer of \$333,333.33 made for the property in view of the indebtedness of the company and threatened law suits and other matters which tend to harass the company and make a sale of its property at a higher figure impossible, is a reasonable one, and

WHEREAS, the said Tungsten Products Company is a subsidiary corporation to Nevada Humboldt Tungsten Mines Company, and said Tungsten Products Company and this company have become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it is for the best interests of this Company and of its creditors, to accept the said offer of said Loring and sell said property to him,

RESOLVED, that the Company accept the offer of said W. J. Loring, and that the President and Secretary of this corporation be, and they are hereby, authorized, directed and empowered to execute on behalf of this corporation an agreement or contract of sale with said W. J. Loring, in the words and figures following:

THIS CONTRACT, made and entered into this sixteenth day of August, one thousand nine hundred and nineteen, by and between NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and [676—70] TUNGSTEN PRODUCTS COMPANY, also a Nevada Corporation, the parties of the first part, and W. J. LORING, of the City and



County of San Francisco, State of California, the party of the second part,

WITNESSETH:

That the parties of the first part, for and in consideration of the sum of One (\$1.00) dollar, lawful money of the United States, to them paid by the party of the second part, the receipt whereof is hereby admitted, and in consideration of the moneys to be paid by the party of the second part at the times and in the manner hereinafter provided, do by these presents covenant and agree with the party of the second part to sell, assign, grant, and convey and set over unto the party of the second part, and his heirs and assigns, and the said party of the second part hereby agrees to buy all of the real and personal property now owned by the parties of the first part, including all rights, easements, contracts for power, capital stock of other corporations owned by the parties of the first part, or by either of them, and in brief every article of real, personal, or mixed property, of every kind and description, now owned by the parties of the first part, or either of them, (excepting only the books and corporate records of the parties of the first part) and expressly including the following real and personal property, to wit:

REAL PROPERTY:

All those certain mining claims and mineral bearing lodes, veins and deposits situated in an unknown mining district, in the County of Pershing, for-

merly County of Humboldt, State of Nevada, described as follows:

The Gross Mine No. 2, Gross Mine No. 5, White Rock Mine, and Sky High, lode Mining claims, situated about seven miles northwest [677—71] of Mill City Station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed.

Also, that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt, State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty-seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East

line of said Section, to the Southwest corner thereof; thence west, along the South line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys; together with all the rights, privileges and appurtenances thereunto belonging or in any wise appertaining. Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada corporation, in that certain deed, dated April [678—72] 25, 1918, recorded in Book 53, page 76, of deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying situate and being in the County of Pershing (formerly County of Humboldt, State of Nevada, more particularly described as follows:

Beginning at the Southeast corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east one hundred (100) feet, to the place of beginning. Being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada Corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record ref-

erence is hereby expressly made; together with the mill, plant, improvements, tenements and hereditaments thereon, and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed;

Also, that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or over the northeast quarter of Section Thirty-five (35), Township Thirty-four (34) North, Range Thirty-four (34) east, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident appendant, and appurtenant, or therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page [679—73] 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

#### PERSONAL PROPERTY.

And also, all of the personal property of every kind and description owned by the parties of the first part and each of them, including all of the issued capital stock of the Mill City Development Company owned by said parties of the first part, or either of them, with the certificates representing the same properly endorsed in blank, and all ore in dumps, at the mill or in the mine; all buildings erected upon any of the lands hereinbefore de-



scribed; all tungsten concentrates including all concentrates in the mill or elsewhere owned by either of the parties of the first part and all concentrates in the possession of the party of the second part, the Pacific Tungsten Company, or Wells Fargo Nevada National Bank of San Francisco, and including all moneys due upon concentrates heretofore sold by either of the parties of the first part to the Western Ore Purchasing Company of Reno, Nevada; all mills, machinery, concentrating tables, engines, compressors, motors, belting, cables, hoists and every other article of machinery or equipment, which is now situated on the property of the parties of the first part or either of them above described, or in the concentrating mill thereon, or elsewhere; all mine cars, track, buckets, skips, drilling steel, jackhammers, stoping or drilling machinery of every kind and description and all of the tools and implements used in or about the mine and mill owned by the parties of the first part, or either of them, including all picks, shovels, blacksmith tools and equipment, carpenters' and millwrights' tools; all wagons and trucks; all mine and mill supplies of every kind, wheresoever situated, including powder; all boarding house and bunk-house furnishings [680—74] and equipment; and in brief every article of personal property including credits owned by the parties of the first part, or either of them, excepting only their books, corporate seal, and records, and except any item of cash in bank above the amount of \$195.46, and except supplies now at Mill City amounting

to \$1106.35 (being the following items: Baker Hamilton & Pacific Company, \$3.27, \$25.78, and \$19.10; the Gallagher Machinery Co., \$120.00; The Giant Powder Co., \$813.40; Allis-Chalmers Mfg. Co., \$353.60, and the Stearns-Roger Co., \$71.10).

The parties of the first part also agree to sell, assign, transfer and set over unto the said party of the second part, and his assigns, all of their right, title, interest, claim or demand in, to, or of any and all moneys which may hereafter be found to be due to them, or to either of them, from the Government of the United States by reason of any claim for relief which they, or either of them, have filed or presented under that certain act of Congress of the United States known as the War Minerals Relief Act.

The said party of the second part hereby covenants and agrees to pay or cause to be paid to the parties of the first part as the full purchase price of the entire properties of the parties of the first part as above described, including said right to moneys by reason of said War Minerals Relief Act, the sum of Three Hundred Thirty-three Thousand Three Hundred Thirty-three and Thirty-three one-hundredths (\$333,333.33) Dollars, in lawful money of the United States at the times and in the manner following:

The sum of Fifty Thousand (\$50,000.00) Dollars on or before September 1st, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars [681—75] on or before the first day of October, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the fifteenth day of November, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the twenty-seventh day of December, 1919;

The further sum of Thirty-three Thousand Three Hundred Thirty-three Dollars and Thirty-three cents (\$33,333.33) on or before the 4th day of February, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of May, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of August, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of November, 1920; and

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of February, 1921.

All payments of the installments of the purchase price above set forth shall be made in cash, or by certified check, or by cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to it's Cashier, J. T. Goodin, who is Trustee for the creditors of said parties of the first part, who shall, first pay off the loan of Ten Thousand (\$10,000.00) Dollars procured to pay off labor claims, and shall there-

after pay out said installments so received to said respective creditors in accordance with his trust, but the payment thereof by said party of the second part to said Cashier and Trustee, or his successor as such, shall be a complete performance by said party of the second part of the payment of each installment so paid, and said party of [682—76] the second part shall not be obligated to ascertain whether said payments by said Cashier or Trustee shall have been properly distributed.

IT IS FURTHER UNDERSTOOD AND AGREED that the said party of the second part shall receive credit upon the installment of the purchase price falling due on the first day of September, 1919, for the sum of *Thirteen* Thousand One Hundred fifty-eight and fifty-two one hundredths (\$14,158.52) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company assigned by Rochester Mines Company, a Nevada corporation, to the party of the second part, and also for the sum of Four Thousand Two Hundred Eleven and sixty-two one hundredths (\$4211.62) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company, assigned by Rochester Combined Mines Company, a Nevada corporation, to the party of the second part; said claims or accounts now being the property of the party of the second part and due and owing to him.

IT IS EXPRESSLY COVENANTED AND AGREED that the party of the second part shall, upon the execution of this contract, have immedi-



ate possession of the properties above described, and all thereof and the right to conduct and operate said properties, and extract, ship, reduce and sell ore and concentrate therefrom, and shall apply the net proceeds of any concentrates derived from such operation by the party of the second part, first, to the payment of the debts of the corporation herein set forth, obtaining credit therefor upon the installments of the purchase price in the manner herein set forth, and thereafter shall have the right to apply such net proceeds upon said installments of the purchase price as may then remain. [683—77]

IT IS FURTHER AGREED that the party of the second part, or his assigns, shall have the right to collect all of the accounts and bills receivable due to said parties of the first part, or either of them, and to sell any of the tungsten concentrates covered by this agreement and any tungsten concentrates produced through the operation by him of any of said properties, and shall apply any moneys collected thereunder, whether out of account due said parties of the first part, or either of them, or collected from bills receivable; due, or otherwise, and all moneys derived from the net proceeds of concentrates so sold shall be paid over and apply upon the purchase price of said properties and in payment of the installments as the same become due and said party of the second part shall receive credit therefor upon the next installment falling due after the payment thereof.

In case of any default in the payment of any of said installments of the purchase price when due, then, at the option of said parties of the first part, this agreement shall terminate and be of no further force and effect, and said parties of the first part shall not be obligated to do anything further thereunder, and they shall be entitled to retake possession of said real property, together with any personal property thereon, and to retain any payments hereunder theretofore made as full and liquidated damages for the failure of the party of the second part to complete this agreement, and for rentals for the use and occupation thereof, and for damages caused by the extraction of ore therefrom and its change of appearance resulting therefrom and otherwise, but the option set forth in this paragraph shall not be deemed to abridge any right to which the parties of the first part may be entitled under the [684—78] provisions of this agreement.

The parties of the first part further covenant that within seven days from the date of this contract they will make and execute and deliver to the party of the second part or his assigns, good and sufficient deeds conveying all of the real property owned by the parties of the first part and each of them, and will also make, execute and deliver good and sufficient bills of sale conveying all of the personal property owned by the parties of the first part and each of them, and also good and sufficient assignments of the various contract, franchises, rights or easements and capital stock

of other corporations which the parties of the first part or either of them may own. Simultaneously with the delivery of said deeds to the party of the second part, by the parties of the first part, the party of the second part shall make, execute and deliver to the order of said parties of the first part, a properly executed mortgage containing the usual covenants covering the real property described in the deeds from each of said parties of the first part to the party of the second part, securing to said parties of the first part the payment of the installments of the purchase price of all of the properties at the dates and in the place set forth in this agreement. Said mortgage shall also contain a clause covering the liquidation of creditor's claims as herein set forth.

Time shall be of the essence of this agreement but there shall be a five days' grace allowed on the date set for the payment of each installment before the party of the second part shall be considered to be in default thereon.

It is further stipulated and agreed that this contract [685—79] shall run in favor of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties; and it is further agreed that the party of the second part shall have the right and power to assign this contract.

IN WITNESS WHEREOF the said Nevada Humboldt Tungsten Mines Company has by resolution of its Board of Directors caused its corporate name to be hereto subscribed by its Presi-

dent and Secretary and its corporate seal to be hereto affixed and said Tungsten Products Company has also, by resolution of its Board of Directors, duly adopted, caused its corporate name to be hereto subscribed by its president and secretary and its corporate seal to be hereto affixed, and the party of the second part has hereunto set his hand, in duplicate, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY.

By L. A. FRIEDMAN,  
President.

Attest: R. NENZEL,  
Secretary.

TUNGSTEN PRODUCTS COMPANY.

By L. A. FRIEDMAN,  
President.

Attest: R. NENZEL,  
Secretary.

W. J. LORING.

I hereby approve the foregoing contract on behalf of the Creditors of the parties of the first part and consent to the same.

J. T. GOODIN,  
Trustee for Creditors.

Further Resolved, that the President and Secretary of this Company be, and they are hereby, authorized, empowered and [686—80] directed to make, execute, and deliver on behalf of this Company, and in accordance with the terms of said contract, all necessary deeds, bills of sale and convey-



ances, transferring said property to said W. J. Loring.

Further Resolved, that a meeting of the stockholders of this Company be called forthwith to meet at the office of the Company for the purpose of approving and further ratifying the sale of this Company's property, described in said contract, to said W. J. Loring on Saturday, August 23d, 1919.

The motion that said resolution be adopted was duly seconded by C. H. Jones and unanimously carried.

On motion of H. J. Murrish seconded by C. H. Jones, it was resolved that the sum of Three Thousand (\$3000.00) Dollars be fixed as a maximum amount to be expended by this Company for overhead in winding up its affairs.

The meeting on motion stood adjourned.

R. NENZEL,  
Secretary.

We, the undersigned, Directors of The Nevada Humboldt Tungsten Mines Company do hereby approve the foregoing Minutes and ratify and confirm each and every of the Resolutions therein set forth.

L. A. FRIEDMAN,  
R. NENZEL,  
H. J. MURRISH,  
C. H. JONES,  
C. W. POOLE.

#### WAIVER OF NOTICE.

We, the undersigned, directors of Nevada Humboldt Tungsten Mines Company, a corporation or-

ganized and existing [687—81] under and by virtue of the laws of the State of Nevada, do hereby waive all notice of the time, place and purpose of holding a special meting of the Board of Directors of said corporation, and do hereby fix the time for such meeting as the 23d day of August, 1919, at 3:30 o'clock P. M., and the place of such meeting as the office of the Company in the City of Lovelock, Pershing County, Nevada, and hereby consent that any and all business in any way affecting the interests of the Company may be acted upon at such meeting.

WITNESS OUR HANDS this 23d day of August, 1919.

L. A. FRIEDMAN.

R. NENZEL.

H. J. MURRISH.

C. H. JONES.

C. W. POOLE.

Filed August 23, 1919.

R. NENZEL,  
Secretary.

#### AFFIDAVIT OF MAILING NOTICE.

NOTICE IS HEREBY GIVEN that a special meeting of the Stockholders of Nevada Humboldt Tungsten Mines Company, will be held at the office of the Company in Lovelock, Nevada, on Saturday, August 23d, 1919, at 2 o'clock P. M. for the purpose of ratifying the action of the Directors of said corporation in entering into an agreement of purchase and sale of all the property and assets of the

Company and ratifying any documents executed in connection therewith, and the consideration of any other matters relative thereto that may properly come before the meeting.

Dated, Lovelock, Nevada, August 16th, 1919.

By order of the President.

R. NENZEL,  
Secretary.

State of Nevada,

County of Pershing,—ss.

Gertrude K. Olfers, being duly sworn, [688—82] deposes and says: that on the eighteenth day of August, 1919, in the forenoon of said day, at the **direction and under instructions** from R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, she deposited in the United States Post Office in the City of Lovelock, Nevada, copies of the above notice, addressed to all of the stockholders of record of said Nevada Humboldt Tungsten Mines Company, at their last known address, with postage prepaid.

Dated this 23d day of August, 1919.

GERTRUDE K. OLFERS.

Subscribed and sworn to before me this 23d day of August, 1919.

BOOTH B. GOODMAN,  
Notary Public.

MINUTES OF THE SPECIAL MEETING OF  
THE STOCKHOLDERS OF NEVADA HUM-  
BOLDT TUNGSTEN MINES COMPANY.

Held at Lovelock, Nevada, August 23d, 1919, at  
2:00 o'clock P. M.

Pursuant to written notice given in accordance with the By-Laws of the corporation, a special meeting of the stockholders of the Nevada Humboldt Tungsten Mines Company was held in the office of the Company in the City of Lovelock, Pershing County, Nevada, on the 23d day of August, 1919, at 2:00 o'clock, P. M.,

The meeting was called to order by L. A. Friedman, President of the Company, who was unanimously chosen Chairman, and thereupon R. Nenzel, Secretary of the Company, was chosen Secretary of the meeting. [689—83]

R. Nenzel, Secretary of the Company, stated that written notice of the time, place and purpose of the holding of this meeting had been mailed to all persons owning stock in the corporation, in accordance with the provisions of the By-Laws of the Company. Thereupon Mr. Nenzel exhibited a copy of the notice, together with Affidavits showing that copies of the said notice had been properly mailed to all stockholders as provided for in the By-Laws. The Affidavits were then ordered filed with the Secretary.

The Chairman then ordered the Secretary to call the Roll and the following stock was found to be personally represented:



NAME.	NUMBER OF SHARES
L. A. Friedman .....	39,679
J. T. Goodin .....	63,918
C. H. Jones .....	90,500
H. J. Murrish .....	102,769
Gertrude K. Olfers .....	9,100
R. Nenzel .....	103,769
V. A. Twigg .....	3,000
Frank Carlstrom .....	60,000
C. W. Poole .....	219,160

and the following stock was represented and present by proxy, duly filed.

NAME	NO. OF SHARES	NAME OF PROXY
Lena J. Friedman	250,000	R. Nenzel

The Chairman, on motion seconded and carried, appointed H. J. Murrish to pass upon the proxies filed with the Secretary. Mr. Murrish reported his approval of the proxy of Lena J. Friedman to R. Nenzel and that said proxy was in proper form and had been duly filed.

More than ninety-four per cent of the total issued capital stock of the corporation being present and either represented in person or by proxy, the Chairman declared the meeting to be duly [690—84] organized for the consideration of the business to come before it.

A protest from stockholder David Taylor was received and read and was ordered filed with the Secretary.

The Chairman then stated that the special purpose for which the meeting has been called, as

stated in the notice thereof, was for the purpose of ratifying and authorizing the sale of the entire real and personal property of the corporation to W. J. Loring, jointly with the entire property holdings of the Tungsten Products Company, for the sum of \$333,333.33, and also for the purpose of ratifying the action of the Board of Directors and the President and Secretary of the Corporation in entering into and executing, on behalf of this Company, a sale contract made by the Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, on the one part, and W. J. Loring on the other part. A copy of said contract was exhibited to the stockholders for inspection.

Mr. H. J. Murrish then offered the following Resolution and moved its adoption:

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation, a certain contract and agreement made between this Company and Tungsten Products Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California, on the other part, which contract provided for the sale of this Company's property to said W. J. Loring, jointly with the property of the Tungsten Products Company, for a consideration of \$333,333.33 be, and the same is hereby ratified, confirmed and approved, and the acts of the said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said

contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this Company.

The motion that said Resolution be adopted was duly [691—85] seconded by J. T. Goodin.

A vote was then taken which resulted in 941,800 shares being voted in favor of the motion that said Resolution be adopted, and there being no stock voted against said motion, the Chairman declared the said Resolution to be duly adopted.

H. J. Murrish then offered the following Resolution and moved its adoption:

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Tungsten Products Company to purchase the real and personal property of this corporation and the real and personal property of said Tungsten Products Company for the sum of \$333,333.33, and

WHEREAS, the Board of Directors of this Company, have, by Resolution, recommended that this Company accept the said offer and sell to W. J. Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the

special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Tungsten Products Company, which is a subsidiary corporation to this Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company, and its creditors, to accept the offer of said Loring and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already, in writing, ratified and approved the said contract and the proposed sale of this Company's property, and

WHEREAS, we the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the Company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one,

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds and Bills of Sale to all of the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said con-



tract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this [692—86] corporation be, and they are hereby ordered and directed to a cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation.

The motion that said Resolution be adopted was duly seconded by J. T. Goodin.

A vote was then taken which resulted in 941,800 shares being voted in favor of the motion that said Resolution be adopted and there being no stock voted against said motion, the Chairman declared the said Resolution to be duly adopted.

Mr. H. J. Murrish then offered the following Resolution and moved its adoption:

RESOLVED, that the action of L. A. Friedman, as Trustee for the stockholders of this corporation in voting 94,680 shares of the capital stock of the Tungsten Products Company in favor of the sale of the property of said Tungsten Products Company to W. J. Loring at a meeting of the stockholders of said Tungsten Products Company, held August 16th, 1919, be, and the same is hereby ratified, approved and confirmed, and

FURTHER RESOLVED, that the stockholders of this corporation do hereby adopt the said act of said L. A. Friedman, Trustee, as their own act and deed.

The motion that said Resolution be adopted was duly seconded by R. Nenzel, and a vote of the stock-

holders was then taken which resulted in 941,800 shares of stock being cast in favor of the motion that said Resolution be adopted and none against the said motion. Thereupon the Chairman declared the said Resolution to be duly adopted.

On motion of H. J. Murrish, seconded and carried, the meeting adjourned.

(Signed) L. A. FRIEDMAN,  
Chairman.

Attest: R. NENZEL,  
Secretary.

We, the undersigned stockholders of the Nevada Humboldt Tungsten Mines Company, do hereby approve the foregoing Minutes [693—87] and ratify and confirm the proceedings and resolutions thereat had and adopted.

L. A. FRIEDMAN.  
R. NENZEL.  
H. J. MURRISH.  
C. H. JONES.  
FRANK CARLSTROM.  
J. T. GOODIN.  
C. W. POOLE.  
V. A. TWIGG.  
J. G. HUNTINGTON,  
LENA J. FRIEDMAN,

By R. NENZEL, Proxy.  
GERTRUDE K. OLFERS.

MINUTES OF SPECIAL MEETING OF BOARD  
OF DIRECTORS OF NEVADA HUMBOLDT  
TUNGSTEN MINES COMPANY.

Held in Lovelock, Nevada, August 23d, 1919.

Pursuant to the foregoing written Waiver of Notice, signed by all of the Directors a meeting of the Board of Directors of the Nevada Humboldt Tungsten Mines Company was held at the office of the Company, in the City of Lovelock, County of Pershing, State of Nevada, on the 23d day of August, 1919, at three-thirty o'clock in the afternoon.

There being a quorum present the meeting was called to order by President L. A. Friedman.

The minutes of the previous meeting, held on the 16th day [694—88] of August, 1919, were read, and on motion of H. J. Murrish, seconded and carried, the same were approved as read.

On motion of H. J. Murrish, seconded by C. H. Jones, and carried, the following resolution was adopted:

WHEREAS, the stockholders of this corporation have, by resolution, duly adopted, approved and ratified the contract heretofore entered into by this Company with W. J. Loring, of the City and County of San Francisco, State of California, for the sale of properties of this Company therein described, together with the properties of Tungsten Products Company, for a consideration of \$333,333.33, and have directed this Board to cause the said contract to be carried out and performed on the part of this Company, and,

WHEREAS, the form of mortgage to be given by said Loring as security for said purchase price has been inspected by this Board and the same has been found satisfactory in all particulars.

RESOLVED, that the President and Secretary of this Company, be, and they are hereby authorized, empowered and directed to accept from said W. J. Loring a mortgage, in the form presented and upon receipt of said mortgage, duly executed by said W. J. Loring, to make, execute and deliver to said W. J. Loring good and sufficient deeds of conveyance, bills of sale and assignments, conveying to said W. J. Loring all of the property of this corporation according to the terms of that certain agreement dated the 16th day of August, 1919, made by and between this Company and Tungsten Products Company on the one part, and said W. J. Loring, on the other part, and to do all other acts and things necessary or convenient to carry out the terms of said contract on the part of this corporation.

There being no further business to come before the meeting, it was, on motion seconded and carried, adjourned.

R. NENZEL,  
Secretary.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Humb. T. M. Co. et al. Minutes Special Meeting Stockholders Tungsten M. Co. Plffs. Ex. No. 46. Filed Sept. 20, 1920. T. J. Edwards, Clerk. [695—89]



**Plaintiff's Exhibit No. 49.**

**POSTAL TELEGRAPH — COMMERCIAL  
CABLES.**

Clarence H. Mackay, President.

**TELEGRAM.**

Received at Evans Building, L8 New York Avenue,  
Washington, D. C. Telephone: Main 6600.

41ch 734p 102 BLUE

D. Denver COLO May 25 1919

B. L. Thane,

Willard Hotel, Washington, DC.

Bancroft reports more than forty thousand tons developed at least two sides thought has not yet got assay results new tonnage Bayless reports titles good Bancroft wires development up to expectations and considers proposition good stop Strongly opposed any government loan and employment Washington attorneys with cash retainer Brown taken ten thousand my father twenty thousand I can swing ninety five thousand if necessary with your twenty five this make necessary amount letter due Biltmore Hotel Tuesday morning think Poole better come west immediately advise filing claim to comply with act there deciding latter on how best to push it duplicate Newyork.

DAVID TAYLOR. [698—92]

THE NEW WILLARD,  
Washington.  
WILLARD'S HOTEL COMPANY,  
F. S. Hight, President.

May 26, 1919.

Mr. B. L. Thane,  
Biltmore Hotel,  
New York City, N. Y.

Dear Thane:

Enclosed is your telegram from Taylor. I have also attended to the sending of copies of your telegram to Bishop to Harriman and Ford as you requested. Hope to be able to get over to New York before you return.

Yours truly,

C. W. POOLE.

[Endorsed]: No. B-7. U. S. District Court. Dist. of Nevada. Taylor v. Nev. Hum. T. M. Co. et al. Taylor to Thane and Poole to Thane. May 25 & 26/19. Plffs. Ex. No. 49. Filed Sept. 21st, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 50.**

(Illustration of Mr. Nenzel's testimony.)

[Endorsed]: B-7. U. S. Dist. Court. Dist. of Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Illustration of Mr. Nenzel's Testimony. Plffs. Ex. No. 50. Filed Sept. 21, 1920. T. J. Edwards, Clerk. [699—93]

**Plaintiff's Exhibit No. 52.**

WESTERN UNION TELEGRAM.

Paid Day Letter 1:55 PM

Denver, Colo. March 28, 1919.

Nevada Humboldt Tungsten Mines Co.,  
Lovelock, Nevada.

Bancrofts plans changed at Palace Hotel San Francisco today he may or may not come back via Denver stop However do not believe his presence necessary for proposed conference would be glad to see Messrs Poole Murrish and Nenzel.

DAVID TAYLOR.

Consolidated Ores Co.,

730 Symes Bldg., Denver. [700—94]

[Endorsed]: No. B-7. U. S. Dist. Court, District of Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Taylor to Tungsten Co. Mch. 28/19. Plffs. Ex. No. 52. Filed Sept. 22d, 1920. T. J. Edwards, Clerk.

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**Plaintiff's Exhibit No. 53.**

WHEREAS, David Taylor, as plaintiff, has commenced in the United States District Court, in and for the District of Nevada, an action against the Nevada Humboldt Tungsten Mines Company, a corporation, and Tungsten Products Company, a corporation, defendants, claiming a balance due from the defendants to said David Taylor of Nine Thousand one Hundred Seventy-nine and 44/100ths (\$9,179.44) Dollars for monies advanced to said Nevada Humboldt Tungsten Mines Company and

Tungsten Products Company, corporations aforesaid, and,

WHEREAS, said balance so claimed in favor of said David Taylor includes interest to the amount of One Thousand Eight Hundred Forty-five and 40/100ths (\$1,845.40) Dollars, and,

WHEREAS, in said action a Writ of Attachment was issued against the defendants, and,

WHEREAS, the defendants have heretofore given a bond and undertaking for the release of said Attachment, and,

WHEREAS, L. A. Friedman and James T. Goodin are sureties on said bond so given for the release of said Attachment in said Action,

NOW, THEREFORE, in consideration of the dismissal of said action so pending aforesaid, and the further consideration of the release of James T. Goodin and L. A. Freidman and all other sureties on the bond for the release of the [701—95] Attachment so given in said action, and in consideration of the waiver of any claim of the plaintiff in said action for interest in the sum of One Thousand Eight Hundred Forty-five and 40/100ths (\$1.845.40) Dollars, and in settlement of the claim for the balance claimed to be due to said David Taylor from the said corporations in said action in the said United States District Court, and for the further consideration of the sum of Ten (\$10.00) Dollars in hand paid by said David Taylor to said L. A. Friedman and James T. Goodin, the Nevada Humboldt Tungsten Mines Company, a corporation, and Tungsten Products Company, a corporation,



and James T. Goodin and L. A. Friedman do hereby agree and promise, jointly and severally, to pay to said David Taylor the sum of Seven Thousand Three Hundred Thirty-four and  $\frac{4}{100}$  (\$7,334.04) Dollars payable as follows:

One thousand (\$1,000.00) Dollars cash, the receipt whereof is hereby acknowledged by David Taylor;

Six Thousand Three Hundred Thirty-four and  $\frac{10}{100}$  (\$6,334.04) Dollars on or before the ~~1st~~ 10th day of February, 1920.

December  
Dated: This 15th day of ~~November~~, 1919.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY.

By L. A. FRIEDMAN,  
President.

TUNGSTEN PRODUCTS COMPANY,  
By L. A. FRIEDMAN,  
President.

L. A. FRIEDMAN.

J. T. GOODIN.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nevada Humb. T. M. Co. et al. Agreement to pay Taylor \$7,334.04. Plffs. Ex. No. 53. Filed October 1st, 1920. T. J. Edwards, Clerk. [702—96]

**Plaintiff's Exhibit No. B-54.**

HOYT, NORCROSS, THATCHER, WOODBURN  
& HENLEY,

Attorneys and Counselors at Law, Reno National  
Bank Building, Reno, Nevada.

October 14, 1920.

Mr. T. J. Edwards,  
Clerk, U. S. Court,  
Carson City, Nevada.

My dear Mr. Edwards:

Upon the close of the case of Taylor vs. Nevada Humboldt Tungsten Mines Company et al., and I think after the testimony had closed, the defendants offered in evidence a financial magazine showing the prices of certain securities which were sold by Taylor, according to his testimony. The court then stated that I could have an opportunity to present my financial magazines in rebuttal. I am therefore mailing you under separate cover the Commercial & Financial Chronicle of New York, issues of May 24th, May 31st, June 7th, June 14th and July 5th, together with a statement summarizing the quotations in controversy. I would like to have these marked with the proper numbers as exhibits, and ask you to please call this matter to Judge Farrington's attention.

I am also sending a copy of the statement, to-

gether with a copy of this letter to Mr. Wheeler and to Mr. Cooke.

Kindest regards,

Yours sincerely,

GEO. B. THATCHER.

GBT J.

CC: Mr. Cooke, Reno.

Mr. Wheeler, San Francisco. [703—96—A]

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nevada Humb. T. M. Co. et al. The enclosed 4 copies of "The Commercial and Financial Chronicle, together with attached tabulation, are Filed October 15, 1920, as Plffs. Ex. No. B-54, pursuant to letter, also attached. T. J. Edwards.

(Note: The four copies of "The Commercial and Financial Chronicle" and tabulation are too voluminous to set forth here.) [704—96—B]

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**Defendants' Exhibit "A."**

May 14, 1919.

W. S. Bayless,

c/o B. L. Thane,

408 Crocker Building,

San Francisco, California.

In anticipation that we will succeed in raising the necessary money to close the deal with the Nevada Humboldt Tungsten Mines Company on May thirty first it is necessary that we should have certain information in such shape that there will be no ques-

tion about carrying out the transaction. Stop. I am wiring Bancroft as Taylor already has done to make immediate examination of ore reserve so that we may be sure that payment is warranted. Stop. We are also arranging through the New York office so that Haskin and Sells will complete audit of company's books. Stop. Mr. Taylor expects to have his New York legal representative in San Francisco on or before that date to check up all proceedings and decide on any changes or character of new organization. Stop. In order to facilitate this work I have suggested that I could arrange to have you go immediately to the properties and carefully look into the following items. First titles. Second to thoroughly look into and examine all corporate meetings, minute books, see that company is properly organized under the State of Nevada and has fulfilled all of its obligations. Also check up stock books, look into all liens and contracts, payment of taxes, Federal and State, the idea being that you will have made thorough examination of this before Mr. Taylor's lawyer arrives, and be able to make detailed and full report on the same at that time. [705—97]

We plan to have all of this data as well as Bancroft's report and all original documents, minute books and records in San Francisco at the date of the closing of this transaction. Stop. In view of the short time we have available it will be necessary for you to give this your immediate attention and be certain that everything is in proper shape. You might talk over your procedure with Bancroft and



Haskins and Sells so that everything will be in proper shape and you will all co-operate to that end. We have arranged with Poole, the superintendent who is here to wire his associates at the mine to give you the necessary authority to obtain all this data and you can show them on your arrival there this wire. Stop. Keep me advised.

B. L. THANE.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nevada Humb. T. M. Co. et al. Wire—Thane to Bayless, May 14/19. Identified for Defendants as Exhibit "A." T. J. E. Admitted in evidence Sept. 16, 1920. Filed Sept. 16, 1920. T. J. Edwards, Clerk.

---

**Defendants' Exhibit "B."**

Incorporation 1,500,000.00.

300,000 Pfd. 7% Com Redeemable.

1200,000 Com. 10.00 basis

~~900,000~~ Com.

Treasury 300,000 Pfd. )

300,000 Com.)

issue 200,000 Pfd.

200,000 Com.

100,000 Pf. ) leave in

100,000 C ) Treas.

900,000 Common.

40% to Present Owners.

60% to Taylor et al.

360,000 shares.

540,000 shares. [706—98]

\$10.00 Basis Gross Profit .....\$1,401,000  
 Redemption Pfd. stock  $\frac{1}{2}$   
 2 years 7% Interest ..... 228,000

---

Net Profit .....1,173,000

Net Profit to present Owners:

360

——..32 $\frac{3}{4}$ % ..\$384150..38= $\phi$  per share

1100

360

—— or 30% of 1,200,000 Com. issued)

1100

\$12.00 Basis Gross Profit ..... \$1,900,000

Pfd. stock, etc. .... 228,000

---

\$1,672,000

7

Net Profit to Present Owners—\$547,580=54= $\phi$  per share.

### FINANCING.

200,000 Pfd.

7% Interest=14,000

per year

2 years 28,000

200,000

——— shares=17+%

1100,000

of Profits—

on 10.00 basis=\$199,400.00.

on 12.00 basis=\$284,240.00.

Average 30 tons per month=360 per year.

3142 tons will last=about 9 years.

i.e.: Investor will receive back his investment in 3 years with \$14,000 per year interest. Also in the 4th to 9th year on 10.00 basis \$33233 per year; 12/00 basis \$47373 per year.

In order to make investment safe only necessary to show at 8.00 market—or 35400 tons of ore—

10.00 market—or 25500 tons of ore

Basis 8.00 sale Price

3.60 Cost

---

4.40 times 70=\$308.00 a ton.

[707—99]

228000

————=708 tons cts.

308

=35400 tons 1.71% ore 80% recovery.

1,200,000.            840,000            900,000.

Pfd. Treasury Stock shall not be sold to net Company less than 90¢ on \$1.00. Com. Treasury Stock shall not be issued except as \$1 for 1.00 (or less) as bonus to *bona fide* subscribers to preferred. No capital expenditures of company funds shall be made except if approved by vote of 75% stockholders or 6 directors out of 7 at stockholders' meeting called for purpose.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defts. Exhibit No. "B." Filed Sept. 15, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Dep.

**Defendants' Exhibit "C."****CONSOLIDATED ORES CO.**

David Taylor, President.

730 Synes Building.

Denver, Colorado, May 20, 1919.

Mr. R. Nenzel, Sec'y,

Nevada Humboldt Tungsten Mines Co.,

Lovelock, Nevada.

Dear Mr. Nenzel:

Will you please take steps to have all bills assembled and on hand within the next week.

Will you also please arrange that all the stock up in escrow is forwarded to the Wells Fargo Bank in San Francisco.

Will you also please have a special meeting of the stockholders called to authorize the transfer of all Nevada Humboldt, Tungsten Products, and one-half interest in Mill City Development, to a new corporation to be called the "Nevada [708—100] Scheelite Company."

My New York attorney is going carefully into the question of size and form of corporation, etc., advisable, and will be ready to discuss these matters with Mr. Murrish in Lovelock at the end of next week.

If the auditor's report of the books; Bayless' report of the title; and Bancroft's examination checks up what we expect, Thane and I personally expect to go through with the deal. Nobody in the East wanted to tackle the proposition unless they had control, and we were unwilling to give that up.



If there is any possible way in which you can switch the auditors from their Rochester books on to the Nevada Humboldt books and get this out quickly, I should greatly appreciate it, as I would like very much to have the transfer made and the deal closed by the first of June.

Please suggest to Mr. Murrish that in the matters of stockholders' meetings, directors' meetings, authorizations, etc., Mr. Jackson, our New York attorney, will probably be very technical, and I therefore hope everything will be prepared in true "Oriental style."

Particularly I should like to have the opinion of the auditors as to the income tax return made on the various companies for the year 1918, and their opinion as to its correctness.

According to the statements you gave me the first of May, the gross indebtedness of the company was within \$141,000.00 after reduction of the debts by the \$18,000.00 paid by me on last shipment and the elimination of the amount due me or Consolidated Ores Company, which I shall continue to carry personally. [709—101]

Mr. Thane and I therefore figure on the raising of \$150,000.00 in cash, which should pay off all these debts except those for May operations, and leave about \$10,000.00 in the treasury. This would mean the issuing of 157,900 shares of preferred stock at \$95.00 per share net to the Company.

It would greatly relieve our burden if you could persuade the Verdi Lumber Company to take, say, 50% of their bills in preferred stock at par, with a

bonus of one share of common for each share of preferred (i. e., on basis 1,000,000 shares com.).

With regards,

Yours very truly,

DAVID TAYLOR.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defts. Exhibit "C." Filed Sept. 15, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

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**Defendants' Exhibit "D."**

**POSTAL TELEGRAM.**

D Denver, Colo. May 25, 1919.

B. L. Thane,

Willard Hotel,

Washington, D. C.

Bancroft reports more than forty thousand tons developed at least two sides thought has not yet got assay, results new tonnage Bayless reports titles good Bancroft wires, development up to expectations and considers proposition good stop Strongly opposed any government loan and employment Washington attorneys with cash retainer Brown taken ten thousand my father twenty [710—102] thousand I can swing ninety five thousand if necessary with your twenty five this make necessary amount letter due Biltmore hotel Tuesday morning think Poole come west immediately advise filing

claim to comply with act there deciding latter on how best to push it duplicate Newyork.

DAVID TAYLOR.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defendants' Ex. "D." Filed Sept. 15, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

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**Defendants' Exhibit "E."**

WESTERN UNION TELEGRAM.

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always Open.

1919 May 29 AM 6 41

B31 NY 301 NL 1771.

81 New York NY May 28.

David Taylor,

Denver, Colo.

Your wire May twenty seventh it is impossible me to arrange twenty five thousand by second without my actually having to be in San Francisco and as soon as I found I was going to be delayed on account of the work which I now have to do in Washington and therefore would be unable to be in San Francisco as soon as expected I asked Poole if he would arrange so the twenty five thousand would not be called until I had time to arrange it in San Francisco he said he would be glad to do this and I am sure he will be able to arrange it stop The people in New York before whom I have already

laid this have not turned it down but are slow in giving me answer and I cannot press them beyond what I am already doing stop I am certain if you make a payment of one hundred twenty five thousand as planned Poole [711—103] and his partners will be glad give a thirty day extension on the balance which will permit me to clean up my work go west and make necessary arrangements stop The work which I have to do immediately in Washington is much more vital to my associates and myself than anything else at this time so it is impossible for me to leave until it is finished stop Am wiring Poole asking him to arrange to give you all necessary assurance of an extension of time on the twenty five thousand and I am sure he and his associates will be agreeable to this stop If I succeed in getting this Eastern group in will try arrange so that money is forthcoming immediately and anticipate if they decide come in they will want take up a larger percentage of the underwriting.

B. L. THANE.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defts. Exhibit "E". Filed Sept. 15, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Dep.



**Defendants' Exhibit "F."**

For Identification

David Taylor, Esq.

In Account With

Dr. THE NEW YORK TRUST COMPANY Cr.  
1919 1919.

May 3	17 000 00	Apr. 30 Bal.	26 154 57
9	16 000 00	May 1	75 00
10	100 00	3	16 842 70
14	52 318 50	14	56 137 65
15	50 00	15	32 525 23
16	150 00	16	8 628 48
17	50 00	17	8 296 65
19	1 000 00	29	175 00
20	1 500 00	31	25 000 00
22	4 38		
23	1 30		
	3 000 00		
29	30 25		
	5 00		
	1 500 00		
31 Bal.	81 125 85		
<hr/>		<hr/>	
	173 835 28		173 835 28
<hr/>		<hr/>	

May 31 Bal. 81 125 00

I hereby certify the above to be correct.

E. B. LEWIS,

Assistant Treasurer. [712—104]

[Endorsed]: B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defts. Exhibit "F" (For Identification). E. O. Patterson 9/15/20. Filed Sept. 15, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

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**Defendants' Exhibit "G."**

**WESTERN UNION TELEGRAM.**

Received at Pine & Montgomery Sts., San Francisco. Always Open.

1919 May 14 AM 7 35.

A146KS 35.

New York NY 1008A 14.

3081

Howland Bancroft,

CR B Bane,

408 Crocker Bldg.,

San Francisco, Calif.

Important get immediate opinion mine no extended examination needed but want your statement that forty thousand tons sure with one point four recoverable when can you leave for mine answer thirty Pine street Poole here.

**DAVID TAYLOR.**

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Taylor to Bancroft. May 14/19. Defts. Ex. "G." Filed Sept. 16, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "H."**

WESTERN UNION TELEGRAM.

San Francisco, Calif., May 15, 1919.

David Taylor,

30 Pine Street,

New York, N. Y.

Your wire fourteenth. Impossible to determine amount and content of ore without sampling. Stop. Will be exceedingly busy for sometime and am not at all certain that I can undertake the work. [713—105] Stop. While I should like to make this examination suggest you get someone else.

HOWLAND BANCROFT.

(Charge B. L. Thane.)

(Charge Nevada-Humboldt Tungsten.)

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Bancroft to Taylor. May 15/19. Defts. Ex. "H." Filed Sept. 16, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "I."****WESTERN UNION TELEGRAM.**

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always Open.

A May 22 PM. 10 20.

A492SF 60.

Tungsten Nev. 855P 22.

David Taylor 2781

730 Symes Bldg.,

Denver, Colo.

Your letter twentieth just received stop Required tonnage exposed on at least two sides stop Can give no positive assurance regarding tungsten contents until receipt of assay returned stop Believe property will hold up and my former favorable opinion remains unchanged stop Am leaving for Denver from Imlay train number two or twenty early Saturday morning please tell Miss Furber.

**HOWLAND BANCROFT.**

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Bancroft to Taylor, May 22d. Defts. Ex. "I." Filed Sept. 16, 1920. T. J. Edwards, Clerk. [714-106]



**Defendants' Exhibit "J."**

**WESTERN UNION TELEGRAM.**

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always Open.

1919 May 21 PM 12 43

A217SX 14

Tungsten Nev. 1120A 21.

David Taylor, 1080  
730 Symes Bldg.,  
Denver, Colo.

Your wire twentieth via Lovelock just received  
and is unintelligible please reword or repeat.

**HOWLAND BANCROFT.**

2:10 P. M. Phoned house.

Mr. Taylor left for office.

**WESTERN UNION TELEGRAM.**

Paid night message—4:30 PM.

Denver, Colo., May 20, 1919.

Mr. Howland Bancroft,

c/o Nevada Humboldt Tungsten Mines Co.,  
Lovelock, Nevada.

Important letter due Mill City Wednesday mid-  
night mailed you today.

**DAVID TAYLOR.**

Chg. Consolidated Ores Co.

730 Symes Bldg., Denver.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist.  
Nevada. David Taylor vs. Nev. Hum. Tungsten Co.  
et al. Bancroft to Taylor, Taylor to Bancroft,  
May 20 and 21st/19. Defts. Ex. "J." Filed Sept.  
16, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "K."**

CONSOLIDATED ORES CO.

David Taylor, President.

730 Symes Building.

Denver, Colorado, May 20, 1919. [715—107]

Mr. Howland Bancroft,

Nevada Humboldt Tungsten Mines Co.,

Mill City, Nevada.

Dear Howland:

I was glad to learn that you were again at the mine, and this morning have your letter advising of your plans for an assistant and for arranging a quick assaying by Watts.

John G. Jackson, New York attorney, is now planning to leave New York Friday, May 23d, spending a day in Chicago, which would bring him to Lovelock May 29th. I do not wish to go to this expense if your examination does not check up our idea that there is at least 40,000 tons of ore assured, with probabilities of a big additional tonnage, so that, if upon receipt of this letter you can give me any idea as to whether you think the tonnage is there or not, I wish you would wire me either "Advise postponing lawyer's trip," or "Advise having lawyer leave at once."

Inasmuch as eventually Thane and I will hope to place the preferred stock in New York, we thought it better to have a New York lawyer O. K. final form of incorporation, etc.

If it is in any way possible I want to get the deal closed before the first of June, so that I per-

sonally will not have to "carry the sack" for the concentrates now being produced and to be shipped in the beginning of June. If I have to do this it means so much less available money for making good the deficiency between \$150,000.00 and what Thane finally raises in New York.

Please wire me definitely upon receipt of this letter whether or not you can express an opinion by the end of the week.

With regards,

Yours sincerely, [716—108]

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Taylor to Bancroft. May 20/19. Deft. Ex. "K." Filed Sept. 16, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "L."**

**WESTERN UNION TELEGRAM.**

Received at

2-OM AAH 140 NL.

UD Ogden, Utah, May 30, 1919.

B. L. Thane,

Biltmore Hotel,

New York City.

Bancroft original tonnage estimate all right but large part not commercial thus accounting for only twenty thousand tons average recoverable tungsten one point forty six per cent tungstic acid showing sure profit of only one hundred thousand dollars stop Will endeavor extent present option six

months having friendly bankrupt proceedings and myself appointed receiver make Poole superintendent build assay office get assayer at mine and make agreement with court that we will exercise option whenever Bancroft will certify to forty thousand tons of one point four recoverable developed ore on at least two sides stop Bancroft still believes general prospects for big cheap mine excellent stop On this basis will you agree to take twenty five thousand on same basis when requisite tonnage and grade developed stop If you approve suggest wiring Poole urging him to favor this plan address Lovelock Saturday.

DAVID TAYLOR.

130AM.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Taylor to Thane, May 30/19. Deft. Ex. "L." Filed September 16, 1920. T. J. Edwards, Clerk. [717—109]

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**Defendants' Exhibit "M."**

**WESTERN UNION TELEGRAM.**

Received at Pine & Montgomery Sts., San Francisco. Always Open.

1919 Jun. 2 AM 6 34.

A 10D 92 EX NL Repeat Back Denver, Colo. 1.

1126

David Taylor,

Palace Hotel,

San Francisco, Calif.

Final assays received today Stop Results of



sampling show that the total developed partially developed and indicated ore of a commercial grade in the Nevada Humboldt Mine as at May twenty fourth this year is eighteen thousand four hundred and seventy seven tons Stop The average grade of this tonnage as indicated by assay returns from detailed sampling is one point sixty four tungsten trioxide Stop The above summary may be attached to and form a supplementary part of my preliminary report on this property dated February fifteenth nineteen nineteen.

HOWLAND BANCROFT.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Bancroft to Taylor, June 2d, 1919., Deft. Ex. "M." Filed Sept. 16, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "N."**

**NIGHT LETTER.**

May 14, 1919.

Howland Bancroft,  
c/o B. L. Thane,  
408 Crocker Building,  
San Francisco, Calif.

I am glad to hear that you have returned from Mexico. Please advise me by night letter your general opinion on the Copale [718—110] proposition as I would like to talk to Mr. Jackling about it before he leaves here. Stop. Mr. Taylor advises he has wired you to make immediate examination of

Nevada Humboldt Tungsten Mine. The principal purpose to determine and have report complete and available in San Francisco before May thirty first on the tonnage in sight as well as general outlook of property. This must be known in order that we may be certain there is sufficient tonnage to absolutely guarantee the hundred and fifty thousand dollars necessary to close this transaction. For your information I am satisfied deal which Mr. Taylor has made is the best he could make under the circumstances and even so it is not going to be the easiest thing to close this transaction under present conditions but we are hopeful of doing so. Stop. Bayless will show you a wire which I have sent him to-day which will be self explanatory. I hope you will be able to co-operate with him and with us in every way to make this transaction possible because if we are able to close it it will be a good piece of business for all of us and everything must be in final shape by May thirty first and available in my San Francisco office at that date. Stop. Taylor suggests that if you can make examination immediately and then proceed to Denver he could meet you there next week on his way to San Francisco. Please advise me your procedure.

B. L. THANE.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Telegram—Thane to Bancroft, May 14/-19. Defts. Ex. "N." Filed Sept. 16. 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "O."**

**WESTERN UNION TELEGRAM.**

Received at 722 Market St., San Francisco. [719—  
111]

EI32SF E 91 Blue

DENVER COLO 313P APRIL 3 191  
381.

Howland Bancroft,  
Care B. L. Thane,  
Crocker Bldg.,  
San Francisco, Calif.

Have closed alternative option whereby I am to raise funds to liquidate corporation indebtedness as seven per cent preferred stock redeemable from first profits netting company minimum ninety five stop Company to be reorganized or assets transferred to new corpn as required by me I receive sixty two per cent common stock interest present owners receive thirty eight per cent stop Sufficient interest to place preferred stock must be supplied from my share (One inch torn from Exhibit here.) Option still in effect as alternative but both options expire June sixteenth wrote Thane yesterday enclosing copy new agreement.

DAVID TAYLOR.

344P.

[Endorsed]: No. B-7. U. S. District Court, Dist. of Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Taylor to Bancroft, April 3/19. Defts. Ex. "O." Filed Sept. 16, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "P."****CONSOLIDATED ORES CO.**

David Taylor, President,

730 Symes Building,

Denver, Colorado, May 28, 1919.

**PERSONAL.**

Mr. C. W. Poole,

c/o Nevada Humboldt Tungsten Mines Co.,

Lovelock, Nevada.

Dear Mr. Poole: [720—112]

According to Nenzel's statement given me in your offices in Lovelock at the end of April, the gross indebtedness of the Company as of April 30th was \$163,381.20. This was to be reduced by \$18,000.00 out of the draft drawn against the last shipment, thereby making the gross indebtedness \$145,381.20. It was on this basis entirely that we have arranged our financing and have arranged to get \$150,000.00.

Nenzel wired me on May 26th that the "accounts payable were \$5000.00 in excess of estimate," which would therefore increase this amount to \$150,381.20.

While I was in your office you will remember that this statement was not given to me as an estimate, but was given to me as an exact, correct statement of accounts on that date, and said to have been accurately taken from the books.

Neither Thane nor I can go to the people to whom we have talked and say that the accounts were wrong and that we have to have \$5000.00 more, as you can readily understand how this



would look. We cannot increase the preferred stock issue for the same reason, to supply the additional \$5000.00. The only means that has so far occurred to me whereby this can be worked out, is as follows:

As you know, the Company has a credit with the Nevada Humboldt Power Company, of say \$18,000.00, to be paid by deduction of one-half of the monthly power bills. It seems to me that a fair way to arrange this would be for the present stockholders to buy for cash \$5000.00 worth of this credit, thus furnishing the money to take care of the extra indebtedness. The new Company would then agree to repay this \$5000.00 by paying one-half of the monthly power bills each month.

[721—113]

I, personally, cannot take this loan because I have had to dig to the bottom of my pocket to raise the necessary \$150,000 which will be available in cash June the 2d.

Mr. D. R. C. Brown has taken 10,000; F. M. Taylor 20,000; leaving me possibly 120,000. Thane writes that he cannot arrange his 25,000 until he reaches San Francisco and suggested that arrangements might be made whereby the payment of this amount can be postponed until he does arrive. This is not practical, however, as neither Mr. Brown, My father nor myself are willing to make any investment unless the amount to pay off the entire indebtedness at one time is available. You will see, therefore, that I will personally have to raise an additional \$25,000.00 to take care of

Thane's interest until he reaches San Francisco.

When all these debts are paid, there will not be the slightest difficulty in financing the May bills of approximately \$11,000.00 by a loan against the concentrates from a bank.

Frankly, my desire to close the deal June 2d is because if I have to personally advance an additional \$20,000.00 against the May shipment of concentrates, my ability to finance the purchase would be reduced by just that amount.

Mr. Brunton and Mr. Brown will probably spend Saturday at the mine.

Knowing your attitude toward Thane and myself in this matter, I suggest that you talk over the entire proposition frankly with Jackson, who will be in Lovelock when you get there and whom you will find to be a first class fellow and a man who knows his business thoroughly.

Yours sincerely,

DT EWF [722—114]

[Endorsed]: No. B-7. U. S. District Court, Dist. of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al Defts. Exhibit "P." Filed Sept. 16, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

**Defendants' Exhibit "Q."**

POSTAL TELEGRAPH—COMMERCIAL  
CABLES.

Clarence H. Mackay, President,  
TELEGRAM.

Received at Evans Building, 1418 New York  
Avenue, Washington, D. C.

497NYTQ 20 443P

439

D Denver Colo May 26

C W Poole

New Willard Hotel Washn DC

Nenzel now reports indebtedness five thousand  
more than estimated believe your presence Nevada  
imperative if any deal to be closed.

DAVID TAYLOR

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of  
Nevada. David Taylor vs. Nev. Humb. Tung. M.  
Co. et al. Defts. Exhibit "Q." Filed Sept. 16  
1920. T. J. Edwards, Clerk. By E. O. Patterson.

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**Defendants' Exhibit "R."**

WESTERN UNION TELEGRAM.

Received at Lovelock, Nev

8SF MA 117NL

Denver Colo May 25 1919

41

Nevada Humboldt Tungsten Mines Co

Lovelock Nevada

According your statement given me Lovelock

gross indebtedness excluding that to me April thirteen was approximately one hundred sixty three thousand Stop You estimated this would be reduced by eighteen thousand on payment draft with last shipment leaving one hundred forty five thousand Stop Adding eleven [723—115] thousand nay expenses net results June first hundred fifty six thousand Stop Am I to understand that statement given me at Lovelock was thirteen thousand too much thereby making gross June first one hundred forty three thousand Stop Our financing arrangements made on basis outlined first forty three words this telegram and it will be almost impossible for Thane and myself to put through deal on basis of largely increased indebtedness.

DAVID TAYLOR.

436 PM.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. Tungsten Co. et al. Taylor to Nev. H. T. Mines Co. May 25, 19. Defts. Ex. "R." Filed Sept. 17, 1920. T. J. Edwards, Clerk.



**Defendants' Exhibit "S."**

WESTERN UNION TELEGRAM.

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always open.

19 May 24 PM 12 24

B53SF 68 Blue

Lovelock Nev. 925A 24

Captain David Taylor

730 Symes Bldg

Denver Colo

Your letter May twentieth total indebtedness  
excluding money advanced by you one hundred fifty  
thousand four hundred dollars April thirtieth May  
operations will be approximately eleven thousand  
Stop Bayless report on title completed several  
days ago Stop Auditors report of books will not  
be completed June first but will be in position to  
certify to indebtedness suggest your attorney Jack-  
son Stop Lovelock to confer with Murrish and  
auditors

R. NENZEL.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of  
Nevada. [724-116] David Taylor vs. Nev. Hum.  
T. M. Co. et al. Nenzel to Taylor, May 24, 19.  
Defts. Ex. "S." Filed Sept. 17, 1920. T. J.  
Edwards, Clerk.

**Defendants' Exhibit "T."**

WESTERN UNION TELEGRAM.

Received at 915-919 Seventeenth Street, Denver,  
Colo. Always open.

1919 May 26 PM 1 18.

A142SF 37 Blue

Lovelock Nev. 1140A 26

1210

Capt David Taylor

730 Symes Bldg

Denver Colo

Nightletter received our accounts payable five thousand in excess of estimate Stop Refund on over charge on freight and adjustments will probably reduce this four thousand dollars feel we can explain to your satisfaction upon your arrival.

NEVADA HUMBOLDT TUNGSTEN  
MINES CO.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. David Taylor vs. Nev. Hum. T. M. Co. et al. Nev. Hum. T. M. Co. to Taylor, May 26, 19. Defts. Ex. "T." Filed Sept. 17, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "U."**

**MEMORANDUM NO. 3.**

Nevada Humboldt Tungsten Mines Co.

**PROPERTY:**

Area 160 acres, Mill City District, Nevada, nine miles from S. P. Main line. Titles good—Two veins, Tungsten ore, carrying sheelite—outcropping several thousand feet in length, averaging about six feet in width. No. 1 vein proven by development—380 feet in depth, and 2000 feet in length. Average grade ore developed and shipped 1-1/2%. Mill fully equipped to handle 120 or more tons per day. Gross value ore shipped to date \$300,000.00

**PLANT:**

Complete new modern 120 ton daily capacity concentrating mill—Electric power and water lines with all [725—117] necessary buildings and accessories for economical operation. Plant finished and put in operation November, 1918, operations continued to date, now producing 11 1/2 tons concentrates per day, fulfilling contract of 200 tons with David Taylor, which should be finished by June 1, 1919.

**EXAMINATION:**

Property examined July, 1918, by F. L. Hyder, now Assistant in Bureau of Mines at Washington, for B. L. Thane; and January 17—27, 1919 by Howland Bancroft, Mining Geologist of Denver, for David Taylor; both making favorable

reports. Geology and character of deposition of ore such that there is reasonable assurance of continuation of ore in depth to bed of enclosing granite basin, estimated between 1000 and 1500 feet, or 600 to 1100 feet deeper than bottom of present shaft; and, latterly, for full length of outcrops, in proportion, as milling grade now appears on surface.

At date of Hyder's examination, practically no ore fully developed. Mill under construction, operations being confined to immediate mining and shipping. At date Bancroft examination, mill operating full capacity and development progressed so that 8,111 tons of 1.75% ore in sight. Bancroft advised program of development, to be finished July 1st, 1919, which from indicated ore, he estimated should fully develop 157,000 tons by that date. This program now being diligently carried out. On April 1, new survey of this work indicated ore reserve of 41,000 tons, or an increase of 32,000 tons since January 27, with bottom of shaft and all faces of drifts showing good values.

#### **COSTS:**

Bancroft estimates cost of producing and delivering concentrates at domestic market at \$250.00 per ton. Actual operation producing 50 tons in April, 1919, under \$10,000.00 or \$200.00 per ton at Mine, or \$235.00 at market. Only one other property in U. S. that can produce 70% concentrates for less than \$700.00 per ton.



U. S. Consul General at Hongkong (Commerce Reports of April 11, 1919, page 248) states: "Cost of production in China at mine, not less than \$250.00 per ton."

This property has lowest production cost and can compete with any imports even without tariff.

#### MARKET:

(6) Average American price tungsten concentrates 1903—1913, was \$485.10 per ton; average 1915—1917 about \$2500.00 per ton; average 1918 price about \$1700.00 per ton. U. S. Domestic consumption 1913 about 3000 tons; 1918 about 4000 tons. Frank Hess, of U. S. Geological Survey, estimates post-war consumption 8000 tons per year after resumption of normal steel conditions. War has developed many new uses for Tungsten steel in peace industries. March 1st there were about 5000 tons of Tungsten in warehouses and at plants in this country, which was accumulated for war purposes and bought or [726—118] contracted for before the signing of the Armistice. Cash advances by banks and others against this material amounted to about \$1000.00 per ton, and it is to the interest of the buyers to keep the market at this figure so as to liquidate their investment. All interests have been very pessimistic as to the immediate future of Tungsten, but since the beginning of April there has been some interest shown by consumers and the market is again beginning to show activity. On April 25, 1919, 50

tons of concentrates were sold from this property at \$9.50 per unit or \$677.25 per ton.

#### ASSETS AND LIABILITIES:

Assets consisting of:

- (1) Partially developed mine of large probable tonnage of high grade, lowest cost ore, in process of development.
- (2) A fully equipped 120 ton operating plant costing about \$175,000.00.
- (3) 41,000 tons of fully developed ore on April 1st, 1919, having a net value on pre-war basis of \$192,864.00. On April market price \$340,382.00 on probable selling price of \$11.00 per unit, \$426,482.00.
- (4) On July 1, 1919, approximate date completion, development program outlined by Bancroft, there should be developed 157,000 tons of ore having a net value of  

On average price 1904-1913	\$ 732,883.00
On April, 1919, market price	1,293,451.00
On probable selling price of	1,620,631.00
\$11.00 per unit.	

Liabilities consisting of:

About \$150,000.00 of bills payable on May 1st as result of mill, completed within two days of signing of Armistice and immediate cessation of war market. Had war continued two months longer, property would have been clear of all debts.

PROPOSITION:

The Nevada Humboldt Tungsten Mines Co. as now organized has a capital of \$1,000,000 of 1,000,000 shares par value \$1.00. For the purpose of immediately liquidating the present indebtedness of the company amounting to \$150,000 it is proposed to increase the capital in the amount of \$150,000 of 7% cumulative preferred stock to be retired before any dividends are paid on the common. In the sale of this preferred there will be offered a bonus of the common stock subscribed by the owners. The option on this is now held by David Taylor.

In analyzing this offer it will be seen, by referring to item 3 under Assets and Liabilities, that on April [727—119] 1st, 1919, the net value of ore in sight exceeds the sum of this loan and interest for two years, even under pre-war conditions, and under the April market price for Tungsten of \$9.50 per unit, by \$169,382, or 16¢ per share for the common, and, if probable market price of \$11.00 per unit is assumed, by \$255,482, or 25¢ per share for the common.

On July 1st, 1919 on the completion of the Bancroft program of development now being carried out, it will be seen by referring to item 4 under Assets and Liabilities, that, after paying of this preferred principal and interest, there would be left net for the common on pre-war price basis \$561,883, or 56¢ per share; and on April 25, 1919 selling price of \$9.50 per unit, \$1,122,140, or \$1.12 per share for common, and

on probable \$11 per unit selling price, \$1,149,631, or \$1.44 per share of common.

In view of the present showing in the mine and the probability of extension of the veins, laterally and in depth to the bed of the granite basin, the final output of the veins should be several times the above amount, increasing the value of common stock in proportion.

Considering the low cost of production, the possible future tonnage and the present developed ore, it may be safely stated that this proposed preferred issue is now adequately covered in principal and interest, and the common shares are an attractive proposition.

(For confirmation data see accompanying reports.)

[Endorsed]: B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defts. Exhibit "U." Filed Sept. 7, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Dep.

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### **Defendants' Exhibit "V."**

#### **PROPOSED CAPITALIZATION.**

\$1,150,000

150,000 Preferred 7% Cumulative

1,000,000 Common

#### **DIVISION OF COMMON STOCK.**

1,000,000 (380,000 Present Owners

(225,000 Treasury as bonus with Pfd.

(395,000 Taylor, Bancroft and Thane.



PRESENT LINEUP STOCK OWNERSHIP.

F. M. Taylor	20,000)				
D. R. C. Brown	10,000)	Preferred			
B. L. Thane	25,000)				
David Taylor	95,000)				
	150,000				
F. M. Taylor	Bonus with 20,000 Preferred		30,000)		
D. R. C. Brown	Bonus with 10,000 Preferred		15,000)		
B. L. Thane	Bonus with 25,000 Preferred	37,500	)		
	Promotion	79,000	116,500)	Common.	
David Taylor	Bonus with 95,000 Pfd.	142,500			
	Promotion	237,000	379,500)		
H. Bancroft	Promotion.....	79,000)			
Present Owners	.....	380,000)			
		1,000,000			

Preferred stock is to be redeemed in full with 7% interest out of the first earnings of the Co. before any dividends are to be paid on the Common stock, thus making the Preferred stock issue practically a banking proposition, taking into account the ore developed in the mine as security.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defts. Exhibit "V." Filed Sept. 17, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Dep.

**Defendants' Exhibit "W."**

WESTERN UNION TELEGRAM.

Mill City, Nevada. 1/21/19.

David Taylor,  
730 Symes Bldg.,  
Denver, Colorado.

Will make every endeavor to reduce sulphur con-

tent and assure you can be done altho will probably take longer than tenth February due to crudeness of our apparatus. Development as outlined by Bancroft will necessitate roaster as practically all development will be in sulphide zone. Agree with his plan of development. Bancroft is wiring Brunton requesting him to investigate a roaster made in Denver if [729—121] satisfactory will purchase and install at once. This will make it possible to give low sulphur content later shipments at a low cost suggest you offer our scheelite Hudson Reduction Co. who may accept without penalty for high sulphur content thus save time and expense on this first shipment all agree with your arrangement with Lipman.

C. W. POOLE.

[Endorsed]: No. B-7. U. S. District Court, Dist. of Nevada. Taylor vs. Nev. Humb. T. M. Co. et al. Poole to Taylor, Jany. 21/19. Defts. Ex. "W." Filed Sept. 20, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "X"**

January 24th, 1919.

Captain David Taylor,  
730 Symes Building,  
Denver, Colorado.

My dear sir:—

Your letter of January 21st has just been handed to me for answer. At the present time we have 51 tons of scheelite concentrates which we had con-

sidered ready for shipment. This runs 65.1%  $W_{O_3}$ , and 2.84% sulphur; other impurities a trace. As this sulphur content is evidently too high, we will have to have some sort of a device to reduce the sulphur.

When the Nevada Humboldt first struck the sulphide ores, quite a large shipment was made to the Toulon mill of Byllesby & Company, and there, at our expense, on the advice of the Morrill Metallurgical Company of San Francisco, we installed a flotation unit, using the Janney cells. After an expenditure of several thousand dollars the experiment was abandoned as a [730—122] total failure and we have just reshipped from Toulon to our mill at Mill City, the pyritic concentrates on which we carried out this experiment, and I feel that it would be suicidal at this time for us to attempt anything further in the nature of flotation. We will, however, send a sample of our concentrates to Mr. Gayford, as you suggest.

My idea at the present time is to purchase a three hearth roaster of the McDougall type, such as manufactured by the Denver Fire Clay Company. This furnace will cost us about \$1300.00, installed at Mill City, and while I do not feel that it will be ample for all our future requirements, especially when we start a vigorous campaign of development work in the mine, as has been outlined by Mr. Bancroft, I think it will tide us over the present emergency, and if it is satisfactory we could then put in another unit to take care of the increasing demand for capacity.

I have been in communication with the Denver Fire Clay Company and about the best delivery they can make is two weeks on such a furnace. In the meantime we will not be able to ship the concentrates and draw a draft against you, which is going to very seriously embarrass us, and at the present time I do not see how we are going to meet this emergency.

In conversation with Mr. Bancroft, he suggested that one of the principal reasons why you object to us drawing on you before the scheelite had been loaded on the cars was that you were afraid our creditors might pounce upon us and tie up everything we had, including the concentrates, which would leave your advance to us in jeopardy. We are, therefore, offering to all our creditors a note due July 1st, 1919, bearing 6% interest, and if we are able to have them accept these notes, it would seem [731—123] to me that you would be perfectly safe in making us an advance of a few thousand dollars on a bill of sale for material as it stands in the mill. This will then enable us to install the roaster and clean up our concentrates, which, after roasting and running over the magnetic separator, should run about 68% W03, and not to exceed 1/2% sulphur, which will enable you to offer it as high grade scheelite in competition with any in the market to-day. Furthermore, if we can get the roaster going and working on our base ores, we can produce scheelite faster than we are doing now by gleaning what is left of the oxidized ores, which will put our company in a stronger



financial condition at the expiration of your option and materially assist in opening up sufficient ore to make you safe in taking up your option on the property.

Kindly advise me if you will entertain a draft of seven or eight thousand dollars if I can guarantee you that our creditors are all agreed to give us time to work out of our present financial difficulties.

Yours very truly,

(Signed) C. W. POOLE.

[Endorsed]: B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Humb. T. M. Co. et al. Poole to Taylor, Jany. 24/19. Defts. Ex. "X." Filed Sept. 20, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "Y."**

(Map of "S. P." Vein, Looking N. W.)

[Endorsed]: B-7. Defts. Ex. "Y." Filed Sept. 20, 1920. T. J. Edwards, Clerk. [732—124]

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**Defendants' Exhibit "Z."**

Estimated debt of the Company to be from \$130,000 to \$140,000, exclusive of that owed Mr Taylor.

Mr. Taylor will advance \$85,000, \$75,000 to be paid to the creditors pro rata and \$10,000 to be used as working capital for the development of the mine, developments to be carried on under the manage-

ment of a mining engineer of experience and ability, to be selected by Mr. Taylor.

The \$85,000 is to be paid back to Mr. Taylor from ore already in sight and developed in the mine, to be mined and milled at such times as Mr. Taylor may deem best.

Mr. Taylor will advance \$37,500 for each 10,000 tons of additional ore blocked out from new developments; ore shall mean, in all circumstances, 1.75% W03. New ore blocked out under this contract shall be determined from time to time by report of Howard Bancroft, Mining Engineer.

When all of the debts of the corporations are paid, Mr. Taylor shall receive 65% of the stock of a corporation to be organized under the laws of Nevada, which shall own all of the mining property of the Nevada Humboldt Tungsten Company, all the assets of the Tungsten Products Company, and 50% of the stock of the Mill City Development Company. Mr. Taylor shall also receive debenture bonds of said new corporation, secured by such mortgage or deed of trust upon the property and assets of the new corporation as may be necessary, said bonds to be in an amount equal to the amount of money due Mr. Taylor at the time when all debts of the old corporation have been paid.

(NOTE IN INK AT END: New corporation to formed, immediately, 65% stock to placed in escrow.)

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Mines Co. et al. Defts. Exhibit "Z." Estimated

Debt of Tungsten Co. Filed Sept. 21, 1920. T. J. Edwards, Clerk. By [733—125] E. O. Patterson, Dep.

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**Defendants' Exhibit "A-1."**

This agreement may be in several counterparts, which together shall constitute one original.

This Agreement shall not be effective unless and until creditors owning at least 95% in amount of the claims set forth in Schedule-A, in excess of \$500 shall become parties hereto.

For the purpose of facilitating the carrying out of this agreement the Creditors parties hereto do hereby jointly and severally make, constitute and appoint—as their true and lawful attorney-in-fact with full power and authority to do any act, enter into any agreement, appertaining to the matters herein set forth, accept payment in full or on account of their claims, to supplement this agreement as may be necessary to give receipts and generally to do any act or thing to facilitate the carrying out of this agreement as fully as each or all of the creditors themselves might or could do.

The bonds shall by their terms become due in five years and meanwhile the Company Covenants and agrees to apply to their redemption all net earnings not required to pay creditors or development work. Net earnings available for this purpose shall be set aside and applied annually to the redemption of such bonds as the directors shall select by lot.

The Mill and equipment therein shall be at all times insured to the full amount available against destruction or [734—126] damage by fire or otherwise. The new company covenants to apply any moneys received from the Adjustment of damage losses to the prompt repair of the Mill. If the Mill shall be totally destroyed, the Insurance Moneys shall be applied to the payment of outstanding bonds in like manner as if they were net earnings.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defts. Exhibit No. "A-1." Unsigned Agreement of Tungsten Stockholders—The addendum. Filed Sept. 21, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

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**Defendants' Exhibit "A-2."**

In the United States District Court, in and for the  
District of Nevada.

AT LAW.

DAVID TAYLOR,

Plaintiff,

VS.

C. W. POOLE, R. NENZEL, H. J. MURRISH, L.  
A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J.  
G. HUNTINGTON, and LENA J. FRIED-  
MAN,

Defendants.



## BILL OF COMPLAINT.

Comes now the plaintiff in the above-entitled action and complains of the defendants, and for cause of action alleges:

### I.

That plaintiff is a citizen and resident of the State of Colorado and of the City and County of Denver in said State.

### II.

That the defendants, and each of them, are citizens and residents of the State of Nevada and of Lovelock, Pershing [735—127] County in said state.

### III.

That this is the controversy between citizens and residents of different states, and the amount in controversy herein, exclusive of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars.

### IV.

That on or about the 16th day of January, 1919, the defendants executed, made and entered into a contract with the plaintiff for the sale of all their respective interests in The Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, said interests of the respective parties being represented by certain shares of stock in said companies; said Nevada Humboldt Tungsten Mines Company being then and there the owner of certain mines and mining claims and mining rights in certain real estate,

all situated near Mill City in what is now the County of Pershing in the State of Nevada; that the Tungsten Products Company was a subsidiary of said Nevada Humboldt Tungsten Mines Company and owned and operated a mill for the treatment and concentration of certain scheelite ores produced by the Nevada Humboldt Tungsten Mines Company at its property aforesaid, and that the Mill City Development Company was a corporation owning certain real estate, also a pipe-line and water rights, and about fifty (50%) per cent of the capital stock of said corporation being then and there owned by the Nevada Humboldt Tungsten Mines Company or the Tungsten Products Company hereinbefore mentioned. That a copy of said contract for the sale of said respective interests of the defendants is attached to this Complaint, made a part hereof and marked "Exhibit A." [736—128]

## V.

That sometime immediately preceding the making and execution of the contract of January 16th, Exhibit "A," there had been brought to the attention of the plaintiff a report of one Howland Bancroft, a mining engineer, of and concerning the mines, mining property and mining rights of the Nevada Humboldt Tungsten Mines Company, which said report showed the amount of development which then existed upon said mining property, and showed that about nine thousand (9,000) tons of scheelite ore of an average of 1.75% tungstic acid had been developed, placed in sight, blocked out and ready

for mining in said mining property of the Nevada Humboldt Tungsten Mines Company; that at all of the times mentioned in this Complaint the defendants, Murrish, Nenzel and Poole were directors of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, and the defendant Poole had general charge of all mining and milling operations of said Nevada Humboldt Tungsten Mines Company and its subsidiary, the Tungsten Products Company; that the facts and truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company and of the development work which had been performed and the new development work in process on and within said mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company, and the amount of ore developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company were at all times mentioned in this Complaint peculiarly within the knowledge and information of the defendants, and particularly of the defendants, Poole, Nenzel, Murrish and Friedman. That in or about the month of March, 1919, plaintiff informed the defendants that he would not exercise his [737—129] option to purchase said interests of the defendants in said corporations under said contract of January 16th; that thereupon the defendants, Poole, Murrish, Nenzel and Friedman, acting for themselves and for the other defendants, falsely and fraudulently, by means of letters and telegrams, informed the plaintiff that

further and new development work had been carried on within the mines, mining claims and mining rights, and property of the Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and ready for mining large quantities of scheelite ore of commercial value and capable of being concentrated, and the concentrates so returned being of great value; that thereupon, and on or about the 2d day of April, 1919, the defendants Poole, Murrish and Nenzel came to Denver, Colorado, for the purpose of inducing the plaintiff to take a new contract for the disposition of their respective interests, or a part thereof, and the plaintiff, relying upon said representations of the defendants Poole, Murrish and Nenzel, who then and there represented themselves, and were acting as the representatives, agents and attorneys in fact for the other defendants, entered into a contract whereby plaintiff undertook to raise sufficient money to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, for which said service the plaintiff was to receive sixty-two (62%) per cent. (NOTE: "Per cent" interlined before filing. E. O. P.) of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) per cent of the issued capital stock of the Tungsten Products Company and sixty-two (62%) per cent of one-half of the issued capital stock of the Mill City Development Company, a full, true and correct copy of said contract being attached [738—



130] to this Complaint, made a part hereof, and marked Exhibit "B." Said contract was issued at Denver, Colorado; (Note: "Said contract was executed at Denver, Colorado" interlined before filing. E. O. P.) that the defendants Poole, Murrish and Nenzel, acting for themselves and as the agents of and for the other defendants, for the purpose of inducing the plaintiff to enter in and upon said supplemental contract, Exhibit B, of date of April 2, 1919, then and there falsely and fraudulently, and with intent to deceive the plaintiff, represented to plaintiff that when the contract of January 16, 1919, was entered into, Exhibit "A," there was blocked out, developed and in sight in said mine about nine thousand (9,000) tons of scheelite ore carrying 1.75% tungstic acid; and that since said date great and additional ore bodies of equal grade had been developed; that a large amount of new development work had been done and performed upon said mines and that there was then on said 2d day of April, blocked out, in sight and ready for mining and reduction into concentrates over sixty thousand (60,000) tons of scheelite ore which would carry from 1.50% tungstic acid to 1.75% tungstic acid; that each and all of said representations were false and untrue, and were known by the defendants at the time they were made to be false and untrue, and were made for the purpose of deceiving the plaintiff and for the purpose of causing him to undertake and carry out the provisions of said supplemental contract of April 2, Exhibit "B," attached hereto; that in truth and in

fact at said time there was opened up and developed and in sight in said mine not to exceed nineteen thousand (19,000) tons of scheelite ore of an average value not to exceed 1.75% tungstic acid.

#### VI. [739—131]

That plaintiff, relying upon and believing said false and fraudulent representations of the defendants, so made on or about the 2d day of April, 1919, immediately gave practically his sole time and attention to the carrying out of the terms of said contract by which he was to raise for the benefit of the corporations, Nevada Humboldt Tungsten Mines Company, Tungsten Products Company and Mill City Development Company, sufficient moneys for the payment of their debts and outstanding obligations, and in so doing and in his endeavor to carry out said provisions of said contract, and for the purpose of consummating the same, laid out and expended for traveling expenses of plaintiff to Lovelock, Nevada, San Francisco, California, New York City and to various other places, for assaying, maps, surveys, expert services for mining examinations and reports, legal fees for the examination of titles and of the organization of the corporations, telegrams and telephones the sum of Eight Thousand Eight Hundred Twenty and 21/100 (\$8,820.21) Dollars.

#### VII.

That plaintiff also gave his time and efforts to said enterprise and the consummation of said contract during all of the time from April 2 to on or

about June 1, 1919; that, as a result of the expenditures, time and efforts of the plaintiff, plaintiff succeeded and had pledged by himself and others associated with him an amount sufficient to meet any and all obligations of his under the terms of said contract, and sufficient to entitle him to receive sixty-two (62%) of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) per cent (NOTE: "per cent" interlined before filing. E. O. P.) [740—132] of the stock of the Tungsten Products Company, and sixty-two (62%) per cent of one-half of the Mill City Development Company under the terms of said contract of April 2, 1919, Exhibit "B."

#### VIII.

That on or about the first of June, 1919, plaintiff discovered the falsity of the representations of the defendants, and thereupon his associates, who had agreed to furnish a large portion of the money necessary for the completion of the obligations of plaintiff under said contract, withdrew from said undertaking and refused to go into the same or to advance any money whatsoever for it.

#### IX.

That had the representations of defendants, as to the amount and quality of ore opened up, developed and in sight in said mine, been true, said ores would have had a net value, over and above all expenses of cost of mining, transportation and sale, of Three Hundred Twenty Thousand (\$320,000) Dollars; that the debts and obligations of said corporations were then, and are now, of about

One Hundred Fifty Thousand (\$150,000) Dollars; that the net value of said mines and of the stock of said companies, after the payment of all debts, had the representations of defendants been true, would have been about One Hundred Seventy Thousand (\$170,000) Dollars; that in truth and fact said corporations, and each of them, are now insolvent; that the total value of their assets, including all ore developed, in sight and available, did not then, or now, exceed the sum of *One Hundred Twenty* (\$120,000) Dollars; that the ore in sight in said mine was not then, to wit on the 2d day of April, or now, of any other, further or greater value than Seventy Thousand (\$70,000) [741—133] Dollars; that the value of the stock which plaintiff would have received under the terms of said contract, and to which he was entitled, had the representations of defendants been true, would have been One Hundred Five Thousand Four Hundred (\$105,400) Dollars.

X.

That by reason of the false and fraudulent representations aforesaid plaintiff has been damaged in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$114,579.44) Dollars.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$114,579.44) Dollars.

NORCROSS, THATCHER & WOODBURN.

Attorneys for Plaintiff.



EXHIBIT "A."

THIS AGREEMENT made between David Taylor, of Denver, Colorado, party of the first part, and L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, all residents of Lovelock, Nevada, being the holders of ninety-nine (99%) per cent of the capital stock of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, and L. A. Friedman, as Trustee, parties of the second part.

WITNESSETH:

That, WHEREAS said L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. [742—134] Huntington, J. T. Goodin, V. A. Twigg and Lena J. Friedman, are the owners and holders of stock in each of the above companies, the number of shares of stock in each company being set opposite their respective signatures hereto, and

WHEREAS, L. A. Friedman is Trustee for all other of said second parties hereto, of all of their interest in the Mill City Development Company, which said corporation is in the process of organization, and which said corporation has not as yet issued its stock, and

WHEREAS said second parties desire to sell all of their interest in the said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company and said Mill City Development

Company, all of which corporations are corporations organized and existing under the laws of the State of Nevada, and

WHEREAS the said first part is desirous of securing an option to purchase the entire interest of all of said second parties in all of said corporation, and

WHEREAS said first part has this day entered into a contract with the Nevada Humboldt Tungsten Mines Company, and said Tungsten Products Company to advance said corporations the sum of One Hundred Thousand Dollars (\$100,000.00) to enable said corporations to continue their business and operations and to discharge a portion of their indebtedness.

1. NOW, THEREFORE, in consideration of the premises and in consideration of the said first party hereby entering into said agreement to advance One Hundred Thousand Dollars (\$100,000.00) to said corporations, said second parties hereby grant and give to said first party an option to purchase all of the stock held by said second parties in the Nevada Humboldt [743—135] Tungsten Mines Company and in the Tungsten Products Company, and all of the interests of said second parties in the Mill City Development Company at the price and in the manner hereinafter specified. This option shall be good up to and including the Sixteenth (16th) day of July, 1919.

2. The price to be paid for all of said stock in all of said corporations owned by all of said second parties shall be Fifty Cents (\$.50) per share

for each share of stock held by said second parties in the Nevada Humboldt Tungsten Mines Company, and said second parties shall transfer, assign and set over unto said first party without further charge or cost to said first party, all of the stock owned by said second parties in the Tungsten Products Company and the Mill City Development Company which they now own or shall be entitled to upon the completion of the organization of the Mill City Development Company; Total purchase price shall be \$498,400.00.

3. Said second parties will during the life of this option pay all of the debts and obligations of all of the said corporations; and agree that said corporations will maintain their plants and equipment in their present condition of efficiency, and will continue the present development work as it has heretofore been conducted. Said second parties will also complete the organization of the Mill City Development Company and discharge all of their obligations to said Mill City Development Company.

4. It is further understood and agreed that no dividends of any kind, nature or description shall be paid by said corporations during the life of this option, and that none of the assets of said corporations shall be disposed of other than Scheelite concentrates provided that replacements [744—136] of equipment shall be permitted.

5. It is further understood and agreed that no increase of salaries or bonuses shall be made, given, or paid to any officers or directors or stockholders

of said corporations during the life of this option.

6. It is further understood and agreed that in case said option is exercised and said debts and obligations of said corporations are not paid at the time of the exercise of said option, the said first party shall deduct a sufficient amount from the purchase price to pay all outstanding debts and obligations and engagements of said corporations.

7. It is understood and agreed that the purchase price for said stock shall be paid as follows:

\$100,000.00 at the time said option is exercised

\$25,000.00 on the first of each and every month thereafter until the total purchase price has been paid.

8. Said option shall be exercised by giving notice in writing to the Wells Fargo Nevada National Bank of San Francisco, and by mailing a written notice of such exercise of said option addressed to each of said parties, addressed to Lovelock, Nevada. Payments shall be made through the Wells Fargo Nevada National Bank of San Francisco, California.

9. Said second parties agree to deposit all of the stock of the Tungsten Products Company owned by said second parties, and Two Hundred Eighty-five Thousand (285,000) shares of stock in the Nevada Humboldt Tungsten Mines Company within Ten (10) days from the execution of this option in the Wells Fargo Nevada National Bank of San Francisco. It is understood and agreed that the remaining shares of stock in said Nevada Humboldt Tungsten Mines Company, upon which



option is hereby [745—137] given, owned severally by said second parties are now up as collateral for certain loans to said individuals, and as to such stock, it is hereby agreed that within Ten (10) days from the execution of this agreement, each and every of the parties signatory hereto, who has such stock now up as collateral shall notify by letter the bank, person or company holding said stock as security of the giving of an option on said stock and shall further instruct said bank, firm or company in the event that the amount secured by such stock is not paid on or before July, 15, 1919, to send the evidence of such debt together with the stock to the Wells Fargo Nevada National Bank for collection, with instructions to said bank, upon the payment of the obligation to place the stock, security therefor, with the escrow herein mentioned, and forthwith mail to the first party a true and correct copy of said letter.

10. The said second parties agree to discharge said 10 loans prior to the exercise of said option. In case said second parties do not discharge said loans, said second parties agree that the Wells Fargo Nevada National Bank shall from the proceeds of the first One Hundred Thousand Dollars (\$100,000.00) deposited, pay said indebtedness to said banks and secure said stock owned severally by said second parties and hold the same until the full purchase price has been paid. Upon the payment of the full purchase price of said stock all of said stock shall be delivered to said first party.

11. Said second parties further agree to deposit in escrow with said Wells Fargo Nevada National Bank resignations of all of their directors and to deliver one resignation to said first party for every One Hundred Thousand Dollars ((\$100,000.00) is paid. Said second parties further agree that they will cause [746—138] to be immediately elected to said Board of Directors of said corporation in place of the director resigning, the nominee of said first party. Upon the exercise of this option and the payment of said One Hundred Thousand Dollars (\$100,000.00), the management of said corporations shall be turned over to said first party, and the said second parties will cause the Board of Directors of said corporations to naem as general manager of Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, the nominee of said first party, which general manager shall have full power and authority to remove any and all superintendents, foremen, agents, servants and employees of said corporations, and to employ any and all necessary superintendents, foremen, agents, servants and employees as may be necessary to operate said properties.

12. In the event said first party shall delay for a period of Five (5) days to make any of the loans to said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company called for in said loan agreement, the said second parties in their discretion may terminate this option by giving immediate notice thereof in writing to said first party.

13. Second parties agree that said One Hundred Thousand Dollars (\$100,000.00) loaned to said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company shall be used solely to pay operating expenses, to purchase of reasonable supplies and reasonable equipment, and to discharge the indebtedness of said corporations.

14. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. [747—139]

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 16th day of January, 1919.

(Signed) DAVID TAYLOR,  
First Party.

L. A. FRIEDMAN	106,640 shares
R. NENZEL	102,000 “
C. W. POOLE	119,160 “
H. J. MURRISH	101,000 “
C. H. JONES	100,000 “
G. K. HINCH	10,000 “
JOHN G. HUNTINGTON	50,000 “
J. T. GOODIN	5,000 “
V. A. TWIGG	3,000 “
LENA FRIEDMAN	400,000 “

Second Parties.

L. A. FRIEDMAN,  
Trustee.

Signed by R. NENZEL,  
Attorney in Fact.

## EXHIBIT "B."

THIS AGREEMENT this day entered into between David Taylor, of Denver, Colorado, first party, and L. A. Friedman, Lena J. Friedman, C. W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, and H J. Murrish, second party.

## WITNESSETH:

WHEREAS the parties hereto, on or about January 16, 1919, entered into an agreement in respect to the purchase and sale of certain stock of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, reference to which contract is hereby made and which said contract is made a part hereof, and [748—140]

WHEREAS the Nevada Humboldt Tungsten Mines Company on the same date, entered into an agreement with the said David Taylor for the advance of certain mines on scheelite concentrates, as more particularly appears in said agreement to which reference is hereby made, and

WHEREAS this agreement is supplemental to both of said agreements and all of said agreements are now to be read together and considered as one in so far as applicable, due reference being had to the changes herein made, and

WHEREAS, owing to the demoralization of the tungsten market it seems impossible for the said David Taylor to market scheelite concentrates or to interest parties in the purchase of tungsten properties, and for that reason it is deemed prob-



able that said Taylor will not be able to exercise his option contained in the above-mentioned agreement, and

WHEREAS, by reason of the facts herein named it may become impossible for the Nevada Humboldt Tungsten Mines Company and the other companies above referred to to secure sufficient funds for the liquidation of their indebtedness, and

WHEREAS it is the purpose of this agreement to so modify the said option so as to enable the said Nevada Humboldt Tungsten Mines Company and its allied companies to pay its debts, continue its operation and secure itself from the jeopardy of possible loss through suits by its creditors.

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) each to the other in hand paid, it is mutually understood, covenanted and agreed as follows, to wit:

1. The first party undertakes to secure by borrowing [749—141] for the Nevada Humboldt Tungsten Mines Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of Two Hundred and Twenty Thousand (\$220,000.00) Dollars, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such

event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing such sum of money, 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company, 62% of one-half of the issued capital stock of the Mill City Development Company; that a deposit of the amount necessary to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided.

**IT IS MUTUALLY UNDERSTOOD AND AGREED:**

A. That the said sum raised by the first party herein is a loan to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not a payment for stock; and that same is to be evidenced by the issuance of redeemable preferred stock with a maximum of 7% cumulative interest, provided that said stock shall not be sold for less than 95% of par net to the Company.

B. That the second parties hereto will cause a new company to be organized, to which the assets of the companies herein described [750—142] shall be conveyed; or shall amend the present articles of the Nevada Humboldt Tungsten Mines Company and its allied companies hereinbefore

mentioned; in order to effectuate this agreement as shall be required by the first party.

C. It is agreed that in such incorporation, or in the amendment above provided, due and proper provision shall be made (1) that 80% of the Board of Directors must approve the sale of any of the property of the Company or the purchase of additional property; (2) that the cumulative voting power of the common stock shall not be taken away; (3) that the net receipts from any relief received from the United States Government under the War-Minerals Relief Act of the corporations herein mentioned or any of them, shall inure to the benefit of such new corporations as may be formed; (4) that profits shall be distributed whenever same have accumulated to the amount of Fifty Thousand (\$50,000.00) Dollars or over, after the debts are paid, unless contrary provided by a vote of 80% of the Directors; (5) and further, that the preferred stock shall be redeemed out of the profits of June 30 or December 31, of every year, whenever the sum of Fifty Thousand (\$50,000.00) Dollars is accumulated, and before any dividends are paid on the common stock.

D. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that the performance of this agreement shall release the first party from any and all obligations to pay the purchase price of said stock mentioned in the option hereinbefore referred to.

E. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that this agreement shall expire by limitation on June 16, 1919, and shall

carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said [751—143] date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided in Paragraph 1 hereof.

Time is the essence of this agreement, and each and every clause hereof shall bind and benefit the heirs and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 2d day of April, 1919.

(Signed) DAVID TAYLOR,  
First Party.

(C. W. POOLE,  
(R. NENZEL,  
(H. J. MURRISH,  
(L. A. FRIEDMAN,  
(LENA J. FRIEDMAN,  
(C. H. JONES,  
(G. K. HINCH,  
(J. T. GOODIN,

By R. NENZEL,  
Attorney in Fact.

(V. A. TWIGG,  
(J. G. HUNTINGTON,

C. W. POOLE,  
Attorney in Fact.

Second Parties.



United States of America,  
State of Nevada,  
County of Washoe,—ss.

David Taylor being first duly sworn deposes and says that he is the Plaintiff in the above-entitled action, that he has heard read the foregoing complaint, and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and belief [752—144] and as to such matters he believes it to be true.

DAVID TAYLOR.

Subscribed and sworn to before me this 9th day of August, 1919.

[Seal]

OBELINE SOUCHEREAU,

Notary Public.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co., et al. Defts. Exhibit No. "A-2." Filed Sept. 21, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy. No. 2263. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. C. W. Poole, et al., Defendants. A Bill of Complaint. At Law. Filed August 16th, 1919. T. J. Edwards, Clerk. By E. O. Patterson, Deputy. A-2. Law Offices of Norcross, Thatcher & Woodburn Reno, Nevada, Attorneys for Plaintiff.

**Defendants' Exhibit "A-3."**

In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH, L.  
A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODING, V. A. TWIGG,  
J. G. HUNTINGTON and LENA J. FRIED-  
MAN,

Defendants.

**ANSWER.**

Comes now the defendants in the above-entitled  
action and for answer to plaintiff's complaint on file  
herein, admit, deny and allege as follows, to wit:

**I. [753—145]**

Respecting the allegations of paragraph I of said  
complaint, defendants have not sufficient knowledge  
or information upon which to base a belief.

**II.**

Defendants admit the allegations contained in  
paragraph II of plaintiff's complaint, except as to  
the defendant J. G. Huntington, and deny that at  
the time of the commencement of this action, the  
said defendant, J. G. Huntington, was a citizen or  
resident of Lovelock, in said Pershing County,

**III.**

Respecting the allegations of paragraph III of

said complaint as above stated, the defendants have not sufficient knowledge or information upon which to base a belief as to plaintiff being a citizen and resident of the State of Colorado and therefore denies that this is a controversy between citizens or resident of different states and admits that the amount in controversy herein exclusive or interest and costs, exceeds the sum of \$3,000.

IV.

Defendants admit the allegations contained in paragraph IV of plaintiff's said complaint.

V.

Respecting the allegations of paragraph V, the defendants allege that they have not sufficient knowledge or information upon which to base a belief and therefore deny that sometime immediately or otherwise preceding the making and execution of the contract of January 16, 1919, referred to in plaintiff's complaint as Exhibit "A," there had been brought to the attention of the plaintiff, a report of the said Howland Bancroft, a mining engineer, of and concerning the mines, mines property and mining [754—146] rights of the Nevada Humboldt Tungsten Mines Company, which said report showed the amount of development which then existed upon said mining property or that the same showed that above nine thousand (9,000) tons or any other number of tons of scheelite ore of an average of 1.75% or other per cent or quality of tungstic acid had been developed or placed in sight or blocked out or ready for mining in said mining

property of the Nevada Humboldt Tungsten Mines Company.

Admit that at all of the times mentioned in said complaint, the defendants, Murrish, and Nenzel were directors of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, but deny that defendant Poole was at all or any of the times mentioned in plaintiff's complaint, or at all, a director of the said Tungsten Products Company and deny that said defendant Poole was at all the times mentioned in plaintiff's complaint, a director of the Nevada Humboldt Tungsten Mines Company and in this connection allege that the defendant Poole was not a director of said Nevada Humboldt Tungsten Mines Company at any time preceding July 2, 1919.

Deny that the defendant Poole had general charge of all mining or milling operations of said Nevada Humboldt Tungsten Mines Company or its subsidiary, the said Tungsten Products Company. Deny that the facts or truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company or of the development work which had been performed or the new development work in process on and within said mines, mining claims, and mining rights of said Nevada Humboldt Tungsten Mines Company, or the amount of ore developed, placed in sight, blocked out or ready for mining in said mining property of the Nevada Humboldt [755—147] Tungsten Mines Company, at all or any of the times mentioned in said complaint, were peculiarly within the knowledge or in-



formation of any of the defendants except Poole, Nenzel and Friedman, and admit that in or about the month of March, 1919, plaintiff informed the defendants that he would not exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16, 1919.

Further answering said paragraph V, defendants deny that in or about the month of March, 1919, or at any other time, or at all, the defendants Poole, Murrish and Friedman or any of them acting for themselves or for all or any of their codefendants, or otherwise, falsely or fraudulently, by means of letters or telegrams or by any other means whatsoever or at all, informed the plaintiff that further or new development work had been carried on within said mining property which had developed or placed in sight, blocked out or made ready for mining, a large or any quantity of scheelite ore of commercial or other value, capable of being concentrated or that the concentrates so returned were of great or any value.

Deny that or about April 2, 1919, the defendants, Poole, Murrish and Nenzel came to Denver, Colorado, for the purpose of inducing the plaintiff to make a new contract for the disposition of their respective interests or a part thereof or for the purpose of inducing the plaintiff to make any contract relative to said property.

Deny that said plaintiff relied upon any false or fraudulent representations of the defendants Poole, Murrish and Nenzel, or any of them, or of the

other defendants or any of them, in entering into the alleged or any contract with the defendants, and in this behalf, the defendants allege that the plaintiff and the [756—148] defendants, on or about April 2, 1919, entered into a supplemental contract whereby plaintiff undertook to raise sufficient money to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company for which said service the plaintiff was to receive 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company and 62% of one-half of the issued capital stock of the Mill City Development Company, which said contract was executed at Denver, Colorado; that the said plaintiff, his agents, mining engineers and representatives, at all times, commencing at a time shortly prior to January 16, 1919, and up to on or about June 1, 1919, had access to all and singular, the mines, mining claims and mining rights of the said Nevada Humboldt Tungsten Mines Company; that at the time said supplemental contract was entered into by said plaintiff on or about April 2, 1919, the said plaintiff, had actual knowledge of all and singular what development work had been carried on and performed within the mines and mining claims and property of the said Nevada Humboldt Tungsten Mines Company; that at said time said plaintiff had actual knowledge of the quantity and concentrating value of what scheelite ores had been developed, placed in sight and blocked out, and the

commercial value thereof; and that said plaintiff continued to and did have actual knowledge during the month of May, 1919, of all and singular the amount and character of said development work that had been carried on within said mines and mining claims and property of said company, and the amount of scheelite ore which had been developed, placed in sight and blocked out, and the commercial value thereof. [757—149]

Further answering the allegations contained in said paragraph V, defendants deny that the defendants, Poole, Murrish and Nenzel, or any of them acting for themselves, or as the agents of and for the other defendants, or otherwise or at all for the purpose of inducing the plaintiff to enter into said supplemental contract of April 2, 1919, or for any other purpose or at all, then and there or at any time, falsely or fraudulently or with intention to deceive said plaintiff, or for any purpose whatsoever, represented to plaintiff that when the contract of January 16, 1919, was entered into, there was blocked out, developed or in sight in said mine, about 9,000 or any other number of tons of scheelite ore carrying 1.75% or other quantity or value tungstic acid.

Deny for the alleged or any purpose, said defendants then or there or at any time or at all, falsely or fraudulently or with intent to deceive said plaintiff, or for any purpose whatsoever, represented to plaintiff that since January 16, 1919, great or additional ore bodies of equal or any grade, had been developed or that a large or any amount of new develop-

ment work had been done or performed on said mines or that there was then on said April 2, 1919 or at any time thereabouts or at all, blocked out, in sight or ready for mining or reduction into concentrates over 60,000 tons or any other amount of scheelite ore which would carry from 1.50% tungstic acid to 1.75% tungstic acid or that would carry any other value or quantity whatsoever. In this connection, defendants allege that said plaintiff, his agents, mining engineer and representatives for the period of from shortly preceding the contract of January 16, 1919, up to and including on or about June 1, 1919, at all times had access to the mines, mining claims, and mining property of said Nevada Humboldt Tungsten Mines Company, and during said period and prior to the execution of the contract [758—150] of April 2, 1919, as well as subsequent thereto, the said plaintiff personally visited, examined and inspected the quality and quantity of the scheelite ores in sight, blocked out and developed during said period of time and particularly the said period between January 16, 1919 and April 2, 1919, and had full, complete and ample opportunity to see, appraise and understand all and singular, the conditions, amount of ore, quantity and value there and all material matters pertaining to the subject matter. That during said period and particularly the period commencing on or about January 16, 1919, to on or about April 2, 1919, the said plaintiff caused all and singular the said mining claims and the property of the said Nevada Humboldt Tungsten Mines Company, and the



scheelite ores therein blocked out, in sight or developed to be examined and inspected by plaintiff's mining engineer, selected by plaintiff for that purpose. Defendants deny that any representations made by said defendants or any of them to the plaintiff, were false or untrue and deny that any representation was at any time made by said defendants or any of them for the purpose of deceiving said plaintiff or for the purpose of causing him to undertake or carry out the provisions of said supplemental contract of April 2, 1919, or at all, save as to the truth and fact of said subject matter. Deny that in truth or in fact at said time, to wit: April 2, 1919, there was opened up and developed and in sight in said mine, not to exceed 19,000 tons of scheelite ore of an average value not to exceed 1.75% tungstic acid and in this connection, defendants allege that at said time there was opened up and developed, and in sight in said mine, quantities of scheelite or greatly in excess of 19,000 tons of an average value of 1.75% tungstic acid.

## VI.

Respecting the allegations of paragraph VI of plaintiff's [759—151] complaint, the defendants deny that plaintiff relied upon or believed the said alleged or any false or fraudulent representations of the defendants, so alleged to have been made on or about April 2, 1919 or at all. That respecting the remaining allegations in said paragraph, defendants have no sufficient knowledge or

information upon which to base a belief and therefore deny that said plaintiff, immediately or at all, gave partially or otherwise, his sole time or attention or any time or attention to the carrying out of the terms of said contract by which he was to raise for the benefit of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the Mills City Development Company, sufficient moneys for the payment of the debts of said corporations and their outstanding obligations, and in like manner and for the reasons last above stated, defendants deny that the plaintiff attempted or endeavored to carry out said provisions of said contract for the purpose of consummating the same or that said plaintiff layed out or expended for his traveling expenses to Lovelock, Nevada, San Francisco, California, New York City and various other places or to any places whatsoever for assay maps, surveyors, expert services or mining examinations, reports, legal fees, organization fees, telegrams, telephones, or for any purpose whatsoever, the sum of \$8,820.31, or any other sum or amounts whatsoever.

#### VII.

Respecting the allegations of paragraph VII of plaintiff's complaint, defendants have no sufficient knowledge or information upon which to base a belief and therefore deny each and every allegation in said paragraph contained.

#### VIII.

Respecting the allegations of paragraph VIII of plaintiff's [760—152] complaint, the defendants

deny that on or about June 1, 1919, or at any other time, or at all, said plaintiff discovered the alleged or any falsity of the alleged, or any representations of the defendants or any of them. That as to each of the remainder of the allegations of said paragraph, defendants have no sufficient knowledge or information upon which to base a belief, and therefore deny all and singular said allegations.

IX.

Respecting the allegations in paragraph IX of the plaintiff's complaint, defendants deny that they, or any of the represented to said plaintiff on or about April 2, 1919, or at any time or at all that the net or other value of said ores over and above all expenses, costs, mining and transportation charges was \$320,000, or made any representations to said plaintiff respecting said subject matter other than according to the truth and fact thereof. Admit that the debts and obligations of said corporations on or about April 2, 1919, approximated \$150,000 and in this connection, defendants allege that the debts and obligations of said corporation at the time of the commencement of this suit, aggregated the sum of \$200,000 or thereabouts. Deny that defendants or any of them represented to said plaintiff that the net value of said mines and the stock of said corporations, after the payment of all debts, would have been about the sum of \$170,000 or that any representations whatsoever were made relative to said subject matter. Deny that defendants or any of them made

the alleged representations and therefore further deny that the net value of said mines and the stock of said companies after the payment of all debts would have been about \$170,000.

Deny that said corporations or any of them, were at the [761—153] time of the commencement of this action, insolvent, or that the total value of their assets including all ores developed, in sight and available did not on or about April 2, 1919, or at the commencement of this action, exceed the sum of \$120,000. Deny that the ore in sight in said mine on April 2, 1919, as well as at the time of the commencement of this action, had no greater value than \$70,000 and deny that the value of the stock which plaintiff alleges he would have received under the terms of said contract and to which he claims to be entitled had the alleged representations of defendants been true, would have been \$105,400 or any definite sum or amount whatsoever and in this connection defendants allege that the value of said stock, had plaintiff carried out his said agreement and received the same, is wholly conjectural, speculative and uncertain and dependent upon market and other conditions wholly beyond the control of either plaintiff or defendants.

#### X.

Respecting the allegations of paragraph X of said complaint, the defendants deny that by reason of or in consequence of the alleged or any false or fraudulent representations made by them or any of them to said plaintiff at the time or in the manner as



alleged in said complaint or otherwise at any time or in any manner whatsoever, said plaintiff has been damaged in the sum of \$114,579.44 or in any amount and deny that for or by reason of any matter or thing whatsoever or at all, the said plaintiff has suffered loss or damage in the sum of \$114,579.44 or in any sum or amount whatsoever or at all.

WHEREFORE: defendants pray that the plaintiff take nothing by his said complaint and action. That said complaint be [762—154] wholly disallowed and denied and that defendants have judgment against said plaintiff for all their costs and disbursements herein incurred or expended.

COOKE, FRENCH & STODDARD,  
Attorneys for Defendants.

State of Nevada,  
County of ———, —ss.

H. J. Murrish, being first duly sworn, deposes and says that he is one of the defendants named in the above-entitled action and makes this verification on behalf of each and all of his codefendants as well as on his own behalf; That he has read the foregoing action and knows the contents thereof, that the same is true of his own knowledge except as to those matters alleged on information and belief and as to those matters he believes it to be true.

H. J. MURRISH.

Subscribed and sworn to before me this 17th day of March, 1920.

[Seal]

ROY W. STODDARD,  
Notary Public.

[Endorsed]: No. 2263. In the United States District Court, in and for the District of Nevada. David Taylor, Plaintiff, vs. C. W. Poole, R. Nenzel, H. J. Murrish et al., Defendants. Answer. Filed March 18th, 1920. T. J. Edwards, Clerk. "A-3." Cooke, French and Stoddard, Attorneys for Defendants. No. B-7. U. S. District Court, District of Nevada. David Taylor vs. Nevada Humboldt Tungsten Mines Co. et al. Defts. Exhibit No. "A-3." Filed Sept. 21, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Dep.

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**Defendants' Exhibit "A-4."**

In the United States District Court, in and for the  
District of Nevada. [763—155]

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. H.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. G. HUNTINGTON and LENA J.  
FRIEDMAN,

Defendants.

**REPLY.**

Comes now the plaintiff in the above-entitled action and for reply to the affirmative matter set forth and contained in the defendants' answer, admits, denies and alleges as follows, to wit:

I.

Replying to Paragraph V of defendants' answer, plaintiff denies that his agents, mining engineers and representatives, at all times, commencing shortly prior to January 16, 1916, and up to June 1, 1919, had access to all and singular, the mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, save and except that plaintiff admits that during said period, plaintiff on one occasion, and his representative, on another, were permitted to go down in the mines, mining claims aforesaid, and the workings thereof; plaintiff denies that at the time said supplemental contract was entered into by plaintiff, on April 2, 1919, that the plaintiff had actual knowledge of all and singular, the development work that had been carried on and performed within the mines and mining claims and property of said Nevada Humboldt Tungsten Mines Company, but, on the contrary, plaintiff alleges that at all times, immediately prior to January 16, 1920, and up to and including on or about the 25th day of May, 1919, plaintiff relied upon the [764—156] representations and statements of defendants, their agents, employees, representatives and attorneys in fact as to all and singular, the condition of said mines, mining claims and mining rights and the development which had been carried on and performed within said mines and mining claims of the Nevada Humboldt Tungsten Mines Company; plaintiff denies that at all times or at said times, plaintiff had actual knowledge of the quantity and concentrating value of

what scheelite ore had been developed, placed in sight and blocked out and the commercial value thereof, but on the contrary, plaintiff alleges that the only knowledge he had of and concerning the same, between the 2d day of April and on or about the 25th day of May, was that which he received from and which was communicated to him by the defendants, their agents, employees, representatives and attorneys in fact. Plaintiff denies that he had and continued to have actual knowledge during the month of May of all and singular, the amount and character of said development work that had been carried on within said mines and mining claims and property of said company and the amount of ore which had been developed, placed in sight, blocked out and the commercial value thereof, but on the contrary, plaintiff alleges that he had no knowledge or information of the amount and character of the said development work or the amount or character of scheelite ore which had been developed, placed in sight, or blocked out, or the commercial value thereof, save and except as he received the same through representations and communications received by him from the defendants, their agents, employees, representatives and attorneys in fact, and save and except that plaintiff admits that on or about the 25th day of May, 1920, he did obtain, and [765—157] thereafter had actual knowledge of the amount and character of said development work, the amount of scheelite ore blocked out, placed in sight and developed, and the commercial value thereof.



Further replying to said Paragraph V, plaintiff denies that he, his agents, mining engineers and representatives, for a period of from shortly preceding the contract of January 16, 1919, up to on or about January 1, 1919, at all times had access to the mines and mining claims and mining property of the Nevada Humboldt Tungsten Mines Company; denies that during said period and prior to the execution of the contract of April 2, 1919, as well as subsequent thereto, plaintiff personally visited, examined and inspected the quality and quantity of scheelite ore in sight, blocked out and developed during said period of time and particularly the period between January 16, 1919, and April 2, 1919, save and except that plaintiff admits that between the 16th day of January, 1919, and the 27th day of January, 1919, plaintiff made a survey and examination of the ores blocked out and developed within the property aforesaid, and plaintiff admits that on or about the 25th day of May, he had another examination and report thereof made by a mining engineer for him of the quantity and quality of scheelite ore in sight, blocked out and developed in said mines and mining properties of the Nevada Humboldt Tungsten Mines Company.

Plaintiff also admits that on one occasion, between the 2d day of April and the 25th day of May, he was in the mines and mining claims of the Nevada Humboldt Tungsten Mines Company, but denies that he examined and inspected the quality and quantity of the scheelite ores in sight, blocked out and developed in said mines. On the contrary,

plaintiff alleges that at [766—158] said time, and at all other times, he relied upon and believed the representations made to him by the defendants, their agents, representatives and attorneys in fact as to the quality and quantity of scheelite ore in sight, blocked out and developed in said mines at the times mentioned in said answer, and at all other times, save and except as reported to him by his mining engineer, at the times hereinbefore mentioned.

Plaintiff denies that he caused all and singular, said mining claims and property and the scheelite ores therein blocked out, in sight, or developed, to be examined and inspected by plaintiff's mining engineer, selected by plaintiff for that purpose, save and except as hereinbefore mentioned.

Plaintiff further denies that on April 2d, there was opened up and developed and in sight in said mines and mining properties of the Nevada Humboldt Tungsten Mines Company, quantities of scheelite ore, greatly, or at all, in excess of 19,000 tons, of an average value of 1.75% tungstic acid.

## II.

Replying to the allegations in Paragraph IX of defendant's answer, plaintiff has not sufficient information with which to answer the allegations in said answer, wherein it is stated that the debts and obligations of said corporations at the time of the commencement of this suit aggregated the sum of \$200,000.00 or thereabouts, and therefore, upon said grounds, denies that at the time of the commencement of this suit, the aggregate debts and obliga-

tions of said corporations exceeded the sum of \$200,000.00 or any other sum or amount larger or greater than \$165,000.00. [767—159]

WHEREFORE, plaintiff prays judgment in his favor, according to the prayer of plaintiff's complaint,

HOYT, NORCROSS, THATCHER, WOOD-  
BURN & HENLEY,

Attorneys for Plaintiff.

United States of America,  
State of Nevada,  
County of Washoe,—ss.

George B. Thatcher, first being duly sworn, deposes and says: That he has read the foregoing Reply and knows the contents thereof; that the same is true to the best knowledge, information and belief of affiant; that affiant makes this verification on behalf of the plaintiff for the reason that the plaintiff is absent from the State of Nevada where his said attorneys reside.

GEO. B. THATCHER.

Subscribed and sworn to before me this 9th day of April, 1920.

[Seal]

BENJ. J. HENLEY,  
Notary Public in and for the County of Washoe,  
State of Nevada.

[Endorsed]: No. 2263. "A-4." In the United States District Court, in and for the District of Nevada. David Taylor, Plaintiff, vs. C. W. Poole, R. Nenzel, et al, Defendants. Reply. Filed this

12th day of April, 1920. T. J. Edwards, Clerk.  
 Hoyt, Norcross, Thatcher, Woodburn & Henley,  
 Reno, Nevada, Attorneys for Plaintiff. "A-4."  
 No. B-7. U. S. District Court, District of Nevada.  
 David Taylor vs. Nevada Humboldt Tungsten Mines  
 Co. et al., Defts. Exhibit No. "A-4." Filed Sept. 21,  
 1920. T. J. Edwards, Clerk. By E. O. Patterson,  
 Deputy. "A-4."

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**Defendants' Exhibit "A-5."**

Lovelock, Nev., Dec. 15/1919. No. 1178.  
 Nevada Humboldt  
 Tungsten Mines Co.  
**FIRST NATIONAL BANK OF LOVELOCK.**  
 94-28.

FNB.

Pay to Norcross, Thatcher & Woodburn, or Order,  
 \$1000.00 One Thousand Dollars.....Dollars.

23-2.

**NEVADA HUMBOLDT TUNGSTEN  
 MINES COMPANY.**

**R. NENZEL,**  
 Secretary.

**L. A. FRIEDMAN,**  
 President.

[Endorsed]: Pay to the order of David Taylor.  
 Norcross, Thatcher & Woodburn. Pay to order of  
 The Colo. National Bank. David Taylor. Pay  
 Denver Branch Federal Reserve Bank of this City,  
 or Order, Prior Endorsements Guaranteed. Colo-  
 rado National Bank. 23-2, Denver, Colo. 23-2.  
 Jan. 2, 1920. Pay Any Bank, Banker or Trust



Co. or Order. Prior Endorsements Guaranteed. Denver Branch Reserve Bank of Kansas City. 23-19. 1137. Pay to the Order of any Bank, Banker, Trust Co. or Federal Reserve Bank. Jan. 6, 1920. Prior Endorsements Guaranteed. Federal Reserve Bank of San Francisco. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Defts. Ex. A05. Filed Sept. 22, 1920. T. J. Edwards, Clerk. "A-5." [768—160]

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**Defendants' Exhibit "A-6."**

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY,

Lovelock, Nevada.

Part payment in settlement of suit of David

Taylor vs. Nevada Humboldt Tungsten

Mines Company, .....1000.00

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1000.00

Extensions correct—C. H. J. Examined and found  
correct ———.

Prices Correct ———. Approved for Payment  
———.

Received —— 191—, of ——, ONE THOUSAND  
AND no/100.....Dollars.  
in full of above account.

DAVID TAYLOR.

By. NORCROSS, THATCHER & WOODBURN.  
"A-6."

Please date and sign this voucher and return to  
above address. If amount is not satisfactory, re-  
turn all papers for correction.

[Endorsed]: No. 1178. Nev. Humboldt Tungsten M. Co. Receipt Voucher. Receipt of Norcross, Thatcher & Woodburn, Reno, Nevada. Distribution. Accounts Payable. \$1000.00. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. H. T. M. Co. et al. Defts. Ex. "A-6." Filed Sept. 22, 1920. T. J. Edwards, Clerk. Total \$1000.00. Month December—, 1919. "A-6."

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**Defendants' Exhibit "A-7."**

**FIRST NATIONAL BANK  
OF LOVELOCK.**

FNB.

94-28.

Lovelock, Nevada, Feb. 9, 1920. No. 3229.

Pay to the order of Gibbons, French & Stoddard

..... \$6334.04.

Sixty Three Hundred Thirty Four Dollars, Four  
Cents—Dollars,

TO THE RENO NATIONAL BANK,  
RENO, NEVADA.

94-3.

V. A. TWIGG,

A Cashier. [769—161]

[Endorsed]: Pay to order of Norcross, Thatcher & Woodburn. Gibbons, French & Stoddard. Norcross, Thatcher & Woodburn. By Frank H. Norcross. "A-7." No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T M. Co. et al. Defts. Ex. "A-7." Filed Sept. 22, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "A-8."**

Lovelock, Nev., Oct. 7/191. No. 1243.

**THE FIRST NATIONAL BANK  
OF LOVELOCK.**

FNB.

94-28.

Pay to First National Bank or order \$6334.04—  
Sixty Three Hundred Thirty Four Dollars, Four  
Cents—Dollars.

**NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY.**

R. NENZEL,  
Secretary.

L. A. FRIEDMAN,  
President.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist.  
Nevada. Taylor v. Nev. Hum. T. M. Co. et al.  
Defts. Ex. "A-8." Filed Sept. 22, 1920. T. J. Ed-  
wards, Clerk. "A-8."

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**Defendants' Exhibit "A-9."**

Nevada Humboldt Tungsten Mines Company,  
Lovelock, Nevada.

Balance due ~~on note favor~~, David Taylor

a/c ..... 6334 04

Settlement Taylor vs. Nevada Humboldt  
Tungsten Mines Co. et al. as per agree-  
ments and stipulations.

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6334 04

Extensions correct—C. H. J. Examined and found  
correct——.

Prices Correct——. Approved for Payment  
——.

Received Feb. 13, 1920, of——, Sixty three Hundred Thirty Four and 04/100 Dollars, in full of above account.

NORCROSS, THATCHER & WOODBURN.

By FRANK H. NORCROSS.

Please date and sign this voucher and return to above address. If amount is not satisfactory return all papers for correction. [770—162]

[Endorsed]: No. 1243. Nevada Humboldt Tungsten Mines Company. Receipt Voucher. Receipt of Norcross, Thatcher & Woodburn, Reno, Nevada. Distribution Accounts Payable 6334 04. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. Tungsten M. Co. et al. Defts. Ex. "A-9." Filed Sept. 22, 1920. T. J. Edwards, Clerk. Total 6334.04. Month February 1920. "A-9."

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**Defendants' Exhibit "A-10."**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, both Nevada corporations, are indebted in various sums, aggregating approximately \$111,493.96, as per audit made by Haskins & Sells, as of April 30, 1919, and in the sum of approximately \$32,674.88, which accrued since April 30, 1919, which latter amount includes approximately \$5000.00 for supplies still on hand for operation of their plants during the succeeding months, making a total indebtedness of approximately \$144,168.84, in ad-



dition to the sum of about \$35,000.00, due the Wells Fargo Nevada National Bank, of San Francisco, the latter being secured by thirty-five tons of tungsten concentrates, and \$18,000.00, face value, of Liberty Bonds.

AND WHEREAS, the said Companies have on hand about twenty-five tons of sixty per cent tungsten concentrates and estimate that an additional twenty tons will be produced from their properties by July 1, 1919, making a total of approximately forty-five tons of tungsten concentrates that will be available for sale by July 1, 1919; and said Companies have presented to the Government of the United States their claims for relief under the War Minerals Relief Bill, which, upon payment, will also be available for the creditors, [771—163]

AND WHEREAS, a meeting of the creditors of said Companies was held on June 7, 1919, at San Francisco, California, at which a large representation of creditors was present, and at which meeting said creditors selected a committee, consisting of Edson F. Adams, of Nevada Valleys Power Company, H. B. Warden, of Redwood Manufacturers Company, J. T. Goodin, of First National Bank, of Lovelock, Nevada, and of Continental National Bank, of Salt Lake City, Utah, R. H. Rowlands, of Verdi Lumber Company, and K. Freitag, of Freitag & Ainsworth, to represent them in the adjustment and liquidation of the creditors' claims.

AND WHEREAS, it is believed by the officers of said debtor Companies, and the committee of

the creditors, that the indebtedness of said Companies can be liquidated by the operation of their properties and plants, by a trustee, appointed for the benefit of the creditors and the sale of the tungsten concentrates on hand and that may be produced from their properties during the balance of the year 1919.

AND WHEREAS, the Mill City Development Company, a Nevada corporation, controls the water, pumping plants and pipe lines, used for operating the properties and plants of the above-named debtor Companies, and one-half of the capital stock of said Mill City Development Company is owned by the said Tungsten Products Company, and the remaining one-half thereof is owned by the Pacific Milling Company; and that the said Mill City Development Company is indebted in the sum of approximately \$20,662.32, one-half of which is a liability of the said Tungsten Products Company, and must be met, by said Mill City Development Company, in order to liquidate, the indebtedness of said Tungsten Products Company and to permit the operation of the properties and plants of the [772—164] above-named debtor Companies.

AND WHEREAS, practically all of the creditors of said debtor Companies have agreed to extend the time for the payment of their indebtedness, for six months, from July 1, 1919, if a trustee is appointed to operate said properties and plants, for the remainder of the year 1919, for the benefit of said creditors.

NOW THEREFORE, we, the said Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, do, and each of us does, hereby make, constitute and appoint James T. Goodin, of Lovelock, Nevada, a trustee for the benefit of said creditors for the following uses and purposes:

To take charge of, direct and operate our, and each of our properties and plants, and also our right to operate the properties and plants of the Mill City Development Company, all of which are situate at Mill City, Pershing County, Nevada, and to sell and dispose of, for such sum, and upon such terms and conditions as he may deem proper, all tungsten concentrates now on hand, and that may be produced, from said properties, during the balance of the year, 1919; to collect and receive any and all moneys that may become due or payable to us, or either of us, from the Government of the United States under the War Minerals Relief Bill; to sell, upon such terms and conditions as he may deem proper, and with the authority and consent of Wells Fargo National Bank of San Francisco, the tungsten concentrates now held by it as security, and to pay Wells Fargo Nevada National Bank, from such sale or sales, the amount due to it, and to apply any balance remaining for the benefit of creditors, as herein provided. [773—165]

That he shall, during the continuance of this trust, have full and complete power and authority to direct the operation of all of said properties and plants, and to incur such indebtedness, in their operation, as he may deem necessary and proper;

to collect all accounts and to receive all moneys that may become due or payable to us; to have and exercise all of the rights and privileges which our, or either of our, companies have, under agreements with the Mill City Development Company and the Pacific Milling Company, or with either of them, and with any other Company or Companies, regarding the use of the water, pumping plants, and pipe lines, controlled by the Mill City Development Company, and which are used directly or indirectly for the operation of our properties and plants, and in that behalf to pay, from the moneys received by him, as such trustee, the proportion of the operating expenses which is provided for in said agreements, or any thereof; and said trustee shall have and exercise all of the rights and privileges which we, or either of us, now have under any and all agreements for the operation of our, or either of our, properties and plants, or any part thereof.

That the proceeds from the sale of the forty-five tons of tungsten concentrates to be available by July 1, 1919, shall first be applied in the payment of the operating costs, incurred during the months of May and June, 1919, and the balance thereof, and also the net proceeds from all tungsten concentrates produced thereafter, and during the balance of the year 1919, from said properties, and any moneys received by him for our, or either of our, use and benefit, from the Government of the United States, under the War Minerals Relief Bill, or from any other source, shall be paid by him to all of [774—166] said creditors pro rata, includ-



ing the liability for the debts of the Mill City Development Company, as herein provided; that he shall, from time to time, and whenever there is a surplus on hand, from any of the sources aforesaid, declare a dividend upon such amount thereof as may not, in his judgment, be required for operating expenses and payrolls, and pay the same to all of said creditors *pro rata*, and he shall declare, and pay, all of said creditors a dividend whenever there has accumulated sufficient moneys not, in his judgment required for operating expenses and payrolls, to pay all of said creditors ten per cent, or more, on account of their said claims; provided, however, that he shall set apart in a separate fund the proportion of said moneys that are payable as a liability of the Tungsten Products Company towards the indebtedness of the Mill City Development Company, and shall pay the same to the Mill City Development Company upon an assessment or by voluntary contribution on the part of all of its stockholders of any amount up to the amount then available in such fund, with the distinct understanding that said moneys shall then be distributed *pro rata* among the creditors of the Mill City Development Company.

That said trustee is also authorized and empowered to pay, from the moneys received by him, as aforesaid, interest upon the notes of the debtor companies now outstanding, as provided therein, and also to pay interest, at the rate of six per cent per annum, from April 30, 1919, until paid, upon

all claims that were due on or prior to April 30, 1919, and which are not evidenced by notes.

That on or before the 10th day of each month, the said trustee shall deliver to the committee of said creditors a statement, showing the tungsten concentrates produced, sold, [775—167] and on hand, the amount realized therefrom, and all operating and other costs and expenses; that said statement, or a copy thereof, shall be kept on file, in the office of Messrs. Freitag & Ainsworth, Hobart Building, San Francisco, California, for the benefit of the creditors, and any of said creditors shall have the right to examine the same.

That the committee of said creditors shall, at all times, during the continuance of this trust, have the right to demand and receive any information they may desire regarding the operations of said properties, or the status of this trust.

That the power and authority hereby conferred upon and vested in said James T. Goodin, as such trustee, shall continue from the date hereof until and including December 31, 1919, unless the debts of all of said creditors are liquidated and discharged before that time,—the said debtor Companies hereby reserving the right to pay all of said creditors before December 31, 1919; and that upon the payment, in full, of the claims of all of said creditors, prior to December 31, 1919, said trust shall terminate and end, otherwise it shall continue in full force and effect from the date hereof to and including December 31, 1919.

That the said trustee shall have full power and authority to make and enter into agreements, of every kind and character, that he may deem necessary or essential to effectuate any of the purposes aforesaid; and that there shall be no personal liability against said trustee for any act or thing done by him in good faith in his exercise of the power and authority hereby conferred upon him.

That said trustee shall receive the sum of \$150.00 a month, as and for his necessary expenses in the performance [776—168] of this trust, and he may also pay out of said trust moneys such reasonable sum as he may deem necessary and proper for legal services.

That in case of the resignation, death or incapacity of said James T. Goodin, then, and in any of said events, the committee selected by the creditors as aforesaid, or a majority of them, shall have the exclusive power and authority to select his successor.

IN WITNESS WHEREOF, we have caused these presents to be executed this 23d day of June, 1919, in our corporate names, and under our corporate seals, by our respective officials thereunto duly authorized.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY,

(Seal) By L. A. FRIEDMAN, Pres.

By R. NENZEL, Sec.

TUNGSTEN PRODUCTS COMPANY,

(Seal) By L. A. FRIEDMAN, Pres.

By R. NENZEL, Sec.

I hereby accept the above and foregoing trust.

J. T. GOODIN.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Appointment of J. T. Goodin as Trustee, June 23/19. Defts. Ex. "A-10." Filed Sept. 22, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "A-11."**

THIS AGREEMENT, this day made and entered into by and among the parties signatory hereto,

WITNESSETH: [777—169]

WHEREAS, the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, all Nevada corporations are indebted in various sums to numerous creditors; said claims aggregating approximately One Hundred and Sixty Thousand (\$160,000.00) Dollars, and

WHEREAS, of these creditors the following claims are not due and will not become due until after June 20th, 1919, to wit:

Bowie Switch Company.....	\$ 187.50
Ingersoll Rand Co. of Calif.....	4107.77
Sullivan Machinery Co.....	1871.30
Paraffine Paint Co.....	351.00
Giant Powder Co.....	475.20
Boston Belting Co.....	69.25
Freitag & Ainsworth.....	3600.00
Red River Lumber Co.....	1059.15



Isaac Upham Co.....	48.61
Allis Chalmers Co.....	1576.20
Meese Gottfried Co.....	5000.00
Redwood Manufacturing Co.....	12234.41

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Total.....\$30,580.39—and

WHEREAS, a meeting with said creditors of said companies was held in the Hobart Building in San Francisco on June 7th, 1919, at which a large representation of said creditors was present and selected a committee to represent them consisting of Edson F. Adams, representing the Nevada Valley Power Company, H. B. Worden, representing the Redwood Manufacturers Company; J. T. Goodin, representing the First National Bank of Lovelock and the Continental National Bank of Salt Lake; R. H. Rowlands, representing the Verdi Lumber Company, and K. Freitag representing Freitag and Ainsworth, and

WHEREAS, it was the intent and purpose of such meeting and of this agreement to aid and assist said companies in so far as possible in an adjustment of their affairs to the end that said debts and all of them be liquidated and paid in full, and [778—170]

WHEREAS, for that purpose an extension of time for the payment of said indebtedness is desired by said companies and agreed to by said creditors.

NOW THEREFORE, we the undersigned in consideration of the premises and of the promises of each other do hereby jointly and severally promise and agree among ourselves and with each other, and

with J. T. Goodin, Edson F. Adams, H. B. Worden, R. H. Rowlands and K. Freitag, the Committee of said Creditors as aforesaid that we jointly or severally will not commence or file any suit or action, or in any other manner attempt, to enforce the payment of ours or either of our claims against the said Nevada Humboldt Tungsten Mines Company, the said Tungsten Products Company, or the said Mill City Development Company, any or all of them, prior to the 17th day of June, 1919, provided however that this agreement shall not be of any force or effect unless or until same shall have been signed by bona fide creditors representing ninety (90%) per cent of the debts of said companies.

Dated June 9th, 1919.

FIRST NATIONAL BANK LOVELOCK.

By J. T. GOODIN, Cashier.

REDWOOD MANUFACTURERS CO.

By H. B. WORDEN,

Vice-President.

NEVADA VALLEYS POWER CO.

By EDSON F. ADAMS, Prest.

VERDI LUMBER CO.

By R. H. ROWLAND, Manager.

FREITAG & AINSWORTH.

By K. FREITAG. [779—171]

SULLIVAN MACHY. CO., Pr.

Per R. P. M. SCOTT.

BOSTON BELTING CORPORATION.

Per JAS. T. CAREY.

GENERAL ELECTRIC COMPANY.

J. V. ANTHONY.

WESTINGHOUSE ELEC. & MFG. CO.

C. E. THOMPSON.

THE GIANT POWDER CO. CONS.

B. O. DONNELL.

W. A. PLUMMER MFG. CO.

W. B. MORRIS.

HOLABIRD ELECTRICAL CO.

E. J. DUGGAN.

H. N. COOK BELTING CO.

MILLIN H. COOK, Pres.

C.

ELECTRIC APPLIANCE COMPANY.

H. Z. WEIFEL.

UNION CARBIDE SALES CO.

J. E. DEMPSEY.

THE DENVER ROCK DRILL MFG. CO.

By E. F. GLASSBROOK.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Agreement—First National Bank, Lovelock, Redwood Mfg. Co., and Others, June 19/19. Defts. Ex. "A-11." Filed Sept. 22, 1920. T. J. Edwards, Clerk. "A-11."

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**Defendants' Exhibit "A-12."**

THIS CONTRACT, made and entered into this sixteenth day [780—172] of August, one thousand nine hundred and nineteen, by and between NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of

Nevada, and TUNGSTEN PRODUCTS COMPANY, also a Nevada corporation, the parties of the first part, and W. J. LORING, of the City and County of San Francisco, State of California, the party of the second part,

WITNESSETH:

That the parties of the first part, for and in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States, to them paid by the party of the second part, the receipt whereof is hereby admitted, and in consideration of the moneys to be paid by the party of the second part at the times and in the manner hereinafter provided, do by these presents covenant and agree with the party of the second part to sell, assign, grant, convey and set over unto the said party of the second part, and his heirs and assigns, and the party of the second part hereby agrees to buy all of the real and personal property now owned by the parties of the first part, including all rights, easements, contracts for power, capital stock of other corporations owned by the parties of the first part, or by either of them, and in brief every article of real, personal or mixed property, of every kind and description, now owned by the parties of the first part, or either of them (excepting only the books and corporate records of the parties of the first part) and expressly including the following real and personal property to wit:

REAL PROPERTY:

All those certain mining claims and mineral bearing lodes, veins and deposits situated in an unknown



mining district, [781—173] in the County of Pershing, formerly County of Humboldt, State of Nevada, described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt, State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty Seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East

line of said Section, to the Southwest corner thereof; thence west, along the South line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United [782—174] States Public Surveys; together with all the rights, privileges and appurtenances thereunto belonging or in any wise appertaining. Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada corporation, in that certain deed, dated April 25, 1918, recorded in Book 53, Page 76, of Deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying situate and being in the County of Pershing (formerly County of Humboldt), State of Nevada, more particularly described as follows:

Beginning at the Southwest corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east one hundred (100) feet, to the place of beginning. Being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record

reference is hereby expressly made; together with the mill, plant, improvements, tenements and hereditaments thereon, and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed;

Also, that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or [783—175] over the northeast quarter of Section Thirty-five (35), Township Thirty-four (34) North, Range Thirty-four (34) east, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident appendant, and appurtenant, or therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

#### PERSONAL PROPERTY.

And also, all of the personal property of every kind and description owned by the parties of the first part and each of them, including all of the issued capital stock of the Mill City Development Company owned by said parties of the first part, or either of them, with the Certificates representing the same properly endorsed in blank, and all ore in dumps, at the mill or in the mine; all buildings erected upon any of the lands hereinbefore described; all tungsten concentrates including all

concentrates in the mill or elsewhere owned by either of the parties of the first part and all concentrates in the possession of the party of the second part, the Pacific Tungsten Company, or Wells Fargo Nevada National Bank of San Francisco, and including all moneys due upon concentrates heretofore sold by either of the parties of the first part to the Western Ore Purchasing Company of Reno, Nevada; all mills, machinery, concentrating tables, engines, compressors, motors, belting, cables, hoists, and every other article of machinery or equipment, which is now situated on the property of the parties of the first part or either of them above described, or in the concentrating mill thereon, or elsewhere; all mine cars, track, buckets, skips, [784—176] drilling steel, jackhammers, stoping or drilling machinery of every kind and description and all of the tools and implements used in or about the mine and mill owned by the parties of the first part, or either of them, including all picks, shovels, blacksmith tools and equipment, carpenters and mill wrights' tools; all wagons and trucks; all mine and mill supplies of every kind, wheresoever situated, including powder; all boarding-house and bunk-house furnishings and equipment; and in brief every article of personal property including credits owned by the parties of the first part, or either of them, excepting only their books, corporate seal, and records, and except any item of cash in bank above the amount of \$195.46; and except supplies now at Mill City amounting to \$1106.25 (being



the following items: Baker, Hamilton & Pacific Co., \$3.27, \$25.78, and \$19.10; The Gallagher Machinery Co., \$120.00; The Giant Powder Co., \$813.40; Allis-Chalmers Mfg. Co., \$353.60, and the Stearns-Roger Co., \$71,10).

The parties of the first part also agree to sell, assign, transfer and set over unto the said party of the second part, and his assigns, all of their right, title, interest, claim or demand in, to, or of any and all moneys which may hereafter be found to be due to them, or to either of them, from the Government of the United States by reason of any claim for relief which they, or either of them, have filed or presented under that certain act of Congress of the United States known as the War Minerals Relief Act.

The said party of the second part hereby covenants and agrees to pay or cause to be paid to the parties of the first part as the full purchase price of the entire properties of the parties of the first part as above described, including said right to moneys [785—177] by reason of said War Minerals Relief Act, the sum of Three Hundred Thirty-three Thousand Three Hundred Thirty-three and Thirty-three One-hundredths (\$333,333.33) Dollars, in lawful money of the United States at the times and in the manner following:

The sum of Fifty Thousand (\$50,000.00) Dollars on or before September 1st, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the first day of October, 1919;

The further sum of Fifty Thousand (\$50,000.00)

Dollars on or before the fifteenth day of November, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the twenty-seventh day of December, 1919;

The further sum of Thirty-three Thousand Three Hundred Thirty-three Dollars and Thirty-three cents (\$33,333.33) on or before the 4th day of February, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of May, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of August, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of November, 1920; and

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of February, 1921.

All payments of the installments of the purchase price above set forth shall be made in cash, or by certified check, or by cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its Cashier, J. T. Goodin, who is Trustee for the creditors of said parties of the first part, who shall, first pay off the loan of Ten Thousand (\$10,000.00) Dollars procured to pay off labor claims, and shall thereafter pay out said [786—178] installments so re-

ceived to said respective creditors in accordance with his trust, but the payment thereof by said party of the second part to said Cashier and Trustee, or his successor as such, shall be a complete performance by said party of the second part of the payment of each installment so paid, and said party of the second part shall not be obligated to ascertain whether said payments by said Cashier or Trustee shall have been properly distributed.

IT IS FURTHER UNDERSTOOD AND AGREED that the said party of the second part shall receive credit upon the installment of the purchase price falling due on the first day of September, 1919, for the sum of Thirteen Thousand One Hundred Fifty-eight and fifty-two one hundredths (\$13,158.52) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company assigned by Rochester Mines Company, a Nevada corporation, to the party of the second part, and also for the sum of Four Thousand Two Hundred Eleven and sixty-two one hundredths (\$4211.62) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company, assigned by Rochester Combined Mines Company, a Nevada corporation, to the party of the second part; said claims or accounts now being the property of the party of the second part and due and owing to him.

IT IS EXPRESSLY COVENANTED AND AGREED that the party of the second part shall, upon the execution of this contract, have imme-

diate possession of the properties above described, and all thereof and the right to conduct and operate said properties, and extract, ship, reduce and sell ore and concentrate therefrom, and shall apply the net proceeds of any concentrates derived from such operation by the party of the second part, first, to the payment of the debts of the corporation herein set forth, obtaining credit therefor upon the installments of the purchase price in the manner [787—179] herein set forth, and thereafter shall have the right to apply such net proceeds upon said installments of the purchase price as may then remain.

IT IS FURTHER AGREED that the party of the second part, or his assigns, shall have the right to collect all of the accounts and bills receivable due to said parties of the first part, or either of them, and to sell any of the tungsten concentrates covered by this agreement and any tungsten concentrates produced through the operation by him of any of said properties, and shall apply any moneys collected thereunder, whether out of account due said parties of the first part, or either of them, or collected from bills receivable, due, or otherwise, and all moneys derived from the net proceeds of concentrates so sold shall be paid over and apply upon the purchase price of said properties and in payment of the installments as the same become due and said party of the second part shall receive credit therefor upon the next installment falling due after the payment thereof.



In case of any default in the payment of any of said installments of the purchase price when due, then, at the option of said parties of the first part, this agreement shall terminate and be of no further force and effect, and said parties of the first part shall not be obligated to do anything further thereunder, and they shall be entitled to retake possession of said real property, together with any personal property thereon, and to retain any payments hereunder theretofore made as full and liquidated damages for the failure of the party of the second part to complete this agreement, and for rentals for the use and occupation thereof and, for damages caused by the extraction of ore therefrom and its change of appearance resulting therefrom and otherwise, but the option set [788—180] forth in this paragraph shall not be deemed to abridge any right to which the parties of the first part may be entitled under the provisions of this agreement.

The parties of the first part further covenant that within seven days from the date of this contract they will make and execute and deliver to the party of the second part or his assigns, good and sufficient deeds conveying all of the real property owned by the parties of the first part and each of them, and will also make, execute and deliver good and sufficient bills of sale conveying all of the personal property owned by the parties of the first part and each of them, and also good and sufficient assignments of the various contract, franchises, rights or easements and capital stock

of other corporations which the parties of the first part or either of them may own. Simultaneously with the delivery of said deeds to the party of the second part, by the parties of the first part, the party of the second part shall make, execute and deliver to the order of said parties of the first part, a properly executed mortgage containing the usual covenants covering the real property described in the deeds from each of said parties of the first part to the party of the second part, securing to said parties of the first part the payment of the installments of the purchase price of all of the properties at the dates and in the place set forth in this agreement. Said mortgage shall also contain a clause covering the liquidation of creditor's claims as herein set forth.

Time shall be of the essence of this agreement but there shall be a five days' grace allowed on the date set for the payment of each installment before the party of the second part shall be considered to be in default thereon.

It is further stipulated and agreed that this contract [789—181] shall run in favor of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties; and it is further agreed that the party of the second part shall have the right and power to assign this contract.

IN WITNESS WHEREOF the said Nevada Humboldt Tungsten Mines Company has by resolution of it's Board of Directors caused it's corpo-

rate name to be hereto subscribed by it's President and Secretary and it's corporate seal to be hereto affixed and said Tungsten Products Company has also, by resolution of it's Board of Directors, duly adopted, caused its corporate name to be hereto subscribed by it's President and Secretary and it's corporate seal to be hereto affixed, and the party of the second part has hereunto set his hand, in duplicate, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY.

By L. A. FRIEDMAN,  
President.

(Seal) Attest: R. NENZEL,  
Secretary.

TUNGSTEN PRODUCTS COMPANY.

By L. A. FRIEDMAN,  
President.

(Seal) Attest: R. NENZEL,  
Secretary.

W. J. LORING.

I hereby approve the foregoing contract on behalf of the Creditors of the parties of the first part and consent to the same.

J. T. GOODIN,  
Trustee for Creditors.

State of Nevada,  
County of Pershing,—ss.

On this 16th day of August, 1919, personally appeared [790—182] before me Booth B. Goodman, a

Notary Public in and for Humboldt County, Nevada  
J. T. Goodin, known to me to be the same person  
who executed the foregoing instrument as trustee  
for the creditors of Nevada Humboldt Tungsten  
Mines Company and Tungsten Products Company,  
Nevada corporations, who acknowledged to me that  
he executed the same freely and voluntarily and for  
the uses and purposes therein mentioned as such  
trustee.

IN WITNESS WHEREOF I have hereunto set  
my hand and affixed my Official Seal this 16th day  
of August, 1919.

(Seal)

BOOTH B. GOODMAN,  
Notary Public.

State of Nevada,  
County of Pershing,—ss.

On this 16th day of August, 1919, personally  
appeared before me Booth B. Goodman, a Notary  
Public in and for Humboldt County, Nevada, W. J.  
Loring known to me to be the same person  
described in and who executed the foregoing instru-  
ment, who acknowledged to me that he executed  
the same freely and voluntarily and for the uses  
and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set  
my hand and affixed my official Seal the day and  
year, in this certificate, first above written.

(Seal)

BOOTH B. GOODMAN,  
Notary Public.



State of Nevada,  
County of Pershing,—ss.

On the 16th day of August, A. D. 1919, personally appeared before me, Booth B. Goodman, a Notary Public in and for Humboldt County, Nevada, L. A. Friedman, known to me to be the President of the Nevada Humboldt Tungsten Mines Company, the corporation that executed the foregoing instrument, and upon oath did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to the said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation, as indicated under said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Seal)

BOOTH B. GOODMAN.

Notary Public in and for the County of Humboldt,  
State of Nevada. [791—183]

State of Nevada,  
County of Pershing,—ss.

On the 16th day of August, A. D. 1919, personally appeared before me, Booth B. Goodman, a Notary Public in and for Humboldt County, Nevada,

L. A. Friedman, known to me to be the President of the Tungsten Products Company, the corporation that executed the foregoing instrument and upon oath did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation, as indicated under said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Seal)

BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada.

KNOW ALL MEN BY THESE PRESENTS:  
That the undersigned, being the owners of more than ninety five per cent (95%) of the total authorized capital stock of the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Nevada Humboldt Tungsten Mines Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secre-

tary of the above corporation in executing the said contract on behalf of said Nevada Humboldt Tungsten Mines Company.

IN WITNESS WHEREOF, we have hereunto set our hands this sixteenth day of August, A. D. 1919.

L. A. Friedman	Owning	91,640 Shares
[792—184]		
Lena J. Friedman	Owning	250,000 Shares
R. Nenzel	Owning	102,000 Shares
G. K. Hinch	Owning	10,000 Shares
H. J. Murrish	Owning	101,000 Shares
C. H. Jones	Owning	100,000 Shares
John G. Huntington	Owning	50,000 Shares
By R. Nenzel, Atty. in fact.		
Frank Carlstrom	Owning	60,000 Shares
C. W. Poole	Owning	219,160 Shares
V. A. Twigg		3,000 Shares
J. T. Goodin		5,000 Shares

State of Nevada,  
County of Humboldt,—ss.

On this 16th day of August, A. D. one thousand nine hundred and nineteen personally appeared before me, Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of John G. Huntington and acknowledged to me that he subscribed the name of the said John G. Huntington thereto as principal, and his own name as attorney in fact, freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

(Seal) BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada.

State of Nevada,  
County of Pershing,—ss.

On this 16th day of August, A. D. one thousand nine hundred [793—185] and nineteen, personally appeared before me, Booth B. Goodman, a Notary Public in and for Humboldt County, L. A. Friedman, Lena J. Friedman, R. Nenzel, G. K. Hinch, H. J. Murrish, C. H. Jones, Frank Carlstrom, C. W. Poole and V. A. Twigg and J. T. Goodin, known to me to the persons described in and who executed the foregoing instrument who severally acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Pershing, the day and year in this certificate first above written.

(Seal) BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada, Acting in Pershing County.

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the



State of Nevada, do hereby certify that the persons whose names are signed to the attached retification of stockholders of the Nevada Humboldt Tungsten Mines Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date, and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as secretary of said Nevada Humboldt Tungsten Mines Company this 16th day of August, 1919 and affixed hereto the corporate seal of said corporation.

(Seal)

R. NENZEL,

Secretary of Nevada Humboldt Tungsten Mines Company, a Nevada Corporation. [794—186]

State of Nevada,

County of Pershing,—ss.

On this 16th day of August, 1919, personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, Nevada, R. Nenzel, known to me to be the same person described in and who executed the foregoing instrument as Secretary of Nevada Humboldt Tungsten Mines Company, who acknowledged to me that he executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned as such Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Official Seal the day and

year, in this certificate, first above written.

(Seal)

BOOTH B. GOODMAN,

Notary Public.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Tungsten Products Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Tungsten Products Company.

IN WITNESS WHEREOF, we have hereunto set our hands this the sixteenth day of August, A. D. 1919.

L. A. Friedman	Owning	1,060 Shares
[795—187]		

L. A. Friedman, Trustee	Owning	94,680 Shares
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H. J. Murrish	Owning	1,000 Shares
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R. Nenzel	Owning	1,000 Shares
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C. H. Jones	Owning	1,000 Shares
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John G. Huntington	Owning	1,000 Shares
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By R. Nenzel, Atty. in fact.

_____	Owning	_____ Shares
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_____	Owning	_____ Shares
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_____	Owning	_____ Shares
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_____	Owning	_____ Shares
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State of Nevada,

County of Pershing,—ss.

On this 16th day of August, A. D. one thousand nine hundred and nineteen personally appeared before me, Booth B. Goodman, a Notary Public, in and for Humboldt County, L. A. Friedman, trustee for the stockholders of Nevada Humboldt Tungsten Mines Company, known to me to be the person described in and who executed the foregoing instrument who acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes mentioned as such trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Pershing, the day and year in this certificate first above written.

(Seal) BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada, acting in Pershing County.

State of Nevada,

County of Humboldt,—ss.

On this 16th day of August, A. D. one thousand nine [796—188] hundred and nineteen personally appeared before me, Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of John G. Huntington and acknowledged to me that he subscribed the name of the said John G. Huntington thereto as principal, and his own name

as attorney in fact, freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

(Seal)

BOOTH B. GOODMAN,

Notary Public in and for the County of Humboldt,  
State of Nevada.

State of Nevada,

County of Pershing,—ss.

On this 16th day of August, A. D. one thousand nine hundred and nineteen personally appeared before me, Booth B. Goodman, a Notary Public in and for Humboldt County, C. H. Jones, L. A. Friedman, H. J. Murrish and R. Nenzel, known to me to be the person described in and who executed the foregoing instrument who acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Pershing, the day and year in this certificate first above written.

(Seal)

BOOTH B. GOODMAN,

Notary Public in and for the County of Humboldt,  
State of Nevada, acting in Pershing County.

[797—189]

I, R. Nenzel, Secretary of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are



signed to the attached ratification of stockholders of Tungsten Products Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Tungsten Products Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

R. NENZEL, (Seal)

Secretary of Tungsten Products Company, a Nevada Corporation.

State of Nevada,  
County of Pershing,—ss.

On this 16th day of August, 1919, personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, Nevada, R. Nenzel, Secretary of Tungsten Products Company, a corporation, known to me to be the same person described in and who executed the foregoing instrument as Secretary of said Tungsten Products Company, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned as such Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Official Seal the day and year, in this certificate first above written.

(Seal)

BOOTH B. GOODMAN,  
Notary Public. [798—190]

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Contract Between Deft. Corporation & Loring. Aug. 16/19. Defts. Ex. "A-12." Filed Sept. 22, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "A-13."**

**MINUTES OF A SPECIAL MEETING OF THE  
BOARD OF DIRECTORS OF TUNGSTEN  
PRODUCTS COMPANY.**

Held at Lovelock, Nevada, August 16th, 1919, at  
10:30 o'clock P. M.

**WAIVER OF NOTICE.**

We, the undersigned, being all of the Directors of Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby waive notice of the time, place and purpose of holding a special meeting of the Board of Directors of said Company, and do hereby designate and fix the 16th day of August, 1919, at 10:30 o'clock P. M. as the time at which said meeting shall be held, and the office of the Company in the City of Lovelock, Pershing County, Nevada, as the place of such meeting, and we do hereby consent that any and all business of any kind or nature which pertains to the business or interests of the Company may be considered and acted upon at said meeting.

WITNESS OUR HANDS this 16th day of August, 1919.

L. A. FRIEDMAN.

R. NENZEL.

H. J. MURRISH.

C. H. JONES.

JOHN G. HUNTINGTON.

Filed Aug. 16, 1919.

R. NENZEL,

Secretary. [799—191]

Pursuant to the above and foregoing written Waiver of Notice, a special meeting of the Board of Directors of Tungsten Products Company, was held at 10:30 o'clock P. M., the 16th day of August, 1919, at the office of the Company in Lovelock, Pershing County, Nevada.

Present, all of the Directors, namely:—L. A. Friedman, R. Nenzel, C. H. Jones, and H. J. Murrish—Absent:—John G. Huntington.

The meeting was called to order by President L. A. Friedman, who stated that the principal business to come before the meeting was the acceptance or rejection of an offer to purchase the Company's real and personal property. On motion seconded and carried, the following Resolution was adopted:

RESOLVED, that the regular rules be, and they are hereby suspended and that the Board proceed immediately to consider the special business to come before it.

W. J. Loring being personally present stated to the Board that he desired to purchase the entire property and holdings of the Company jointly with

the entire property of the Nevada Humboldt Tungsten Mines Company, and that he was ready and willing to pay the sum of \$333,333.33 for the properties of both companies. Mr. Loring presented to the Board a proposed contract of sale between this Company and Nevada Humboldt Tungsten Mines Company, on the one part, and W. J. Loring, on the other part. Thereupon Mr. H. J. Murrish offered the following resolution and moved its adoption:

WHEREAS, W. J. Loring has made an offer to this Company, jointly with Nevada Humboldt Tungsten Mines Company, to purchase the real and personal properties of this corporation and the real and personal properties of Nevada Humboldt Tungsten Mines Company for the sum of \$333,333.33 and have offered to enter into a binding sale agreement with this corporation, and [800—192]

WHEREAS, we, the Directors of Tungsten Products Company, are familiar with the properties of both corporations, and

WHEREAS, this corporation is a subsidiary Company to said Nevada Humboldt Tungsten Mines Company, and the capital stock of this Company, excepting the qualifying shares of the Directors, is held in trust for the shareholders of said Nevada Humboldt Tungsten Mines Company, and

WHEREAS, we, the directors, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the company and threatened law suits and other matters which tend to harass the company, and make a sale of its property at a higher figure impossible, is a reasonable one, and



WHEREAS, this corporation and said Nevada Humboldt Tungsten Mines Company have become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it is for the best interests of this company, and its creditors, to accept the said offer of said Loring and sell said property to him,

RESOLVED, that this Company accept the offer of said W. J. Loring, and that the President and Secretary of this corporation be, and they are hereby authorized, directed and empowered to execute on behalf of this corporation an agreement or contract with said W. J. Loring, in the words and figures following:

THIS CONTRACT, made and entered into this sixteenth day of August, one thousand nine hundred and nineteen, by and between NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and TUNGSTEN PRODUCTS COMPANY, also a Nevada Corporation, the parties of the first part, and W. J. LORING, of the City and County of San Francisco, State of California, the party of the second part.

WITNESSETH:

That the parties of the first part, for and in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States, to them paid by the party of the second part, the receipt whereof is hereby admitted, and in consideration of the moneys to be paid by the party of the second part at the

times and in the manner hereinafter provided, do by these presents covenant [801—193] and agree with the party of the second part to sell, assign, grant, convey and set over unto the said party of the second part, and his heirs and assigns, and the party of the second part hereby agrees to buy all of the real and personal property now owned by the party of the first part, including all rights, easements, contracts for power, capital stock of other corporations owned by the parties of the first part, or by either of them, and in brief every article of real, personal or mixed property, of every kind and description, now owned by the parties of the first part, or either of them (excepting only the books and corporate records of the parties of the first part) and expressly including the following real and personal property, to wit:

#### REAL PROPERTY:

All those certain mining claims and mineral bearing lodes, veins and deposits situated in an unknown mining district, in the County of Pershing, formerly County of Humboldt, State of Nevada, described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City Station, on the Southern Pacific Railroad, copies of location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly

made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada; [802—194]

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed.

Also, that certain lot, piece or parcel of land situated in the County of Pershing (formerly the County of Humboldt, State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty Seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East. Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence west, along the South Line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys; together with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining. Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada corporation.

in that certain deed dated April 25, 1918, recorded in Book 53, page 76, of deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece of parcel of land lying situate and being in the County of Pershing (formerly County of Humboldt, State of Nevada, more particularly described as follows:

Beginning at the Southeast corner of Section Twenty-seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence [803—195] north five (500) hundred feet; thence east one hundred (100) feet, to the place of beginning. Being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record reference is hereby expressly made; together with the mill, plant, improvements, tenements and hereditaments thereon, and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed:

Also, that certain easement for the flow of trailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above



described tract flowing on or over the notheast quarter of Section Thirty-five (35) Township Thirty-four (34) North, Range Thirty-four (34) east, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident appendant, and appurtenant, or therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

#### PERSONAL PROPERTY.

And also, all of the personal property of every kind and description owned by the parties of the first part and each of them, including all of the issued capital stock of the Mill City Development Company owned by said parties of the first part, or either of them, with the certificates representing the same properly endorsed in blank, and all ore in dumps, at the mill or in the mine; all [804—196] buildings erected upon any of the lands hereinbefore described; all tungsten concentrates including all concentrates in the mill or elsewhere owned by either of the parties of the first part and all concentrates in the possession of the party of the second part, the Pacific Tungsten Company, or Wells Fargo Nevada National Bank of San Francisco, and including all moneys due upon concentrates heretofore sold by either of the parties of the first part to the Western Ore Purchasing

Company of Reno, Nevada; all mills, machinery, concentrating tables, engines, compressors, motors, belting, cables, hoists and every other article of machinery or equipment, which is now situated on the property of the parties of the first part or either of them above described, or in the concentrating mill thereon, or elsewhere; all mine cars, track, buckets, skips, drilling steel, jackhammers, stoping or drilling machinery of every kind and description and all of the tools and implements used in or about the mine and mill owned by the parties of the first part, or either of them, including all picks, shovels, blacksmith tools and equipment, carpenters and mill wrights' tools; all wagons and trucks; all mine and mill supplies of every kind, wheresoever situated including powder; all boarding house and bunk-house furnishings and equipment; and in brief every article of personal property including credits owned by the parties of the first part, or either of them, excepting only their books, corporate seal, and records, and except any item of cash in bank above the amount of \$195.46, and except supplies now at Mill City amounting to \$1,106.25 (being the following items; Baker, Hamilton & Pacific Company, \$3.27, \$25.78, and \$19.10; the Gallagher Machinery Co., \$120.00; The Giant Powder Co., \$813.40; Allis-Chalmers Mfg. Co., \$353.60, and the Stearns-Roger Co., \$71.10.)

[805—197]

The parties of the first part also agree to sell, assign, transfer and set over unto the said party

of the second part, and his assigns, all of their right, title, interest, claim or demand in, to, or of any and all moneys which may hereafter be found to be due to them, or to either of them, from the Government of the United States by reason of any claim for relief which they, or either of them, have filed or presented under that certain act of Congress of the United States known as the War Minerals Relief Act.

The said party of the second part hereby covenants and agrees to pay or cause to be paid to the parties of the first part as the full purchase price of the entire properties of the parties of the first part as above described, including said right to moneys by reason of said War Minerals Relief Act, the sum of Three Hundred Thirty Three Thousand Three Hundred Thirty Three and Thirty-three one-hundredths (\$333,333.33) Dollars, in lawful money of the United States at the time and in the manner following:

The sum of Fifty Thousand (\$50,000.00) Dollars on or before September 1st, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the first day of October, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the fifteenth day of November, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the twenty-seventh day of December, 1919;

The further sum of Thirty Three Thousand

Three Hundred Thirty-three Dollars and Thirty-three cents (\$33,333.33) on or before the 4th day of February, 1920; [806—198]

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of May, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of August, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of November, 1920; and

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of February, 1921.

All payments of the installments of the purchase price above set forth shall be made in cash, or by certified check, or by cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to it's Cashier, J. T. Goodin, who is Trustee for the creditors of said parties of the first part, who shall first pay off the loan of Ten Thousand (\$10,000.00) Dollars procured to pay off labor claims, and shall thereafter pay out said installments so received to said respective creditors in accordance with his trust, but the payment thereof by said party of the second part to said Cashier and Trustee, or his successor as such, shall be a complete performance by said party of the second part of the payment of each



installment so paid, and said party of the second part shall not be obligated to ascertain whether said payments by said Cashier or Trustee shall have been properly distributed.

IT IS FURTHER UNDERSTOOD AND AGREED that the said party of the second part shall receive credit upon the installment of the purchase price falling due on the first day of September, 1919, for the sum of Thirteen Thousand One Hundred Fifty-eight and Fifty-two One Hundredths (\$13,158.52) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines [807—199] Company assigned by Rochester Mines Company, a Nevada corporation, to the party of the second part, and also for the sum of Four Thousand Two Hundred Eleven and Sixty-two One Hundredths (\$4211.62) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company assigned by Rochester Combined Mines Company, a Nevada corporation, to the party of the second part; said claims or accounts now being the property of the party of the second part and due and owing to him.

IT IS EXPRESSLY COVENANTED AND AGREED That the party of the second part shall, upon the execution of this contract, have immediate possession of the properties above described, and all thereof and the right to conduct and operate said properties, and extract, ship, reduce and sell ore and concentrate therefrom, and shall apply

the net proceeds of any concentrates derived from such operation by the party of the second part, first, to the payment of the debts of the corporation herein set forth, obtaining credit therefor upon the installments of the purchase price in the manner herein set forth, and thereafter shall have the right to apply such net proceeds upon said installments of the purchase price as may then remain.

IT IS FURTHER AGREED that the party of the second part, or his assigns, shall have the right to collect all of the accounts and bills receivable due to said parties of the first part, or either of them, and to sell any of the tungsten concentrates covered by this agreement and any tungsten concentrates produced through the operation by him of any of said properties, and shall apply any moneys collected thereunder, whether out of account due said parties of the first part, or either of them, or collected from bills receivable; due, or otherwise, and all moneys derived from the net proceeds [808—200] contract, franchises, rights or easements and capital stock of other corporations which the parties of the first part or either of them may own. Simultaneously with the delivery of said deeds to the party of the second part, by the parties of the first part, the party of the second part shall make, execute and deliver to the order of said parties of the first part, a properly executed mortgage containing the usual covenants covering the real property described in the deeds from each of said parties of the first part to the party of the

second part, securing to said parties of the first part the payment of the installments of the purchase price of all of the properties at the dates and in the place set forth in this agreement. Said mortgage shall also contain a clause covering the liquidation of creditor's claims as herein set forth.

Time shall be of the essence of this agreement but there shall be a five day's grace allowed on the dates set for the payment of each installment before the party of the second part shall be considered to be in default thereon.

It is further stipulated and agreed that this contract shall run in favor of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties; and it is further agreed that the party of the second part shall have the right and power to assign this contract.

IN WITNESS WHEREOF the said Nevada Humboldt Tungsten Mines Company has by resolution of it's Board of Directors caused it's corporate name to be hereto subscribed by it's President and Secretary and it's corporate seal to be hereto affixed and said Tungsten Products Company has also, by resolution of its Board of Directors, duly adopted, caused it's corporate name to be hereto subscribed by it's President and Secretary and it's corporate seal [809—202] to be hereto affixed, and the party of the second part has hereunto set his hand,

in duplicate, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY.

By \_\_\_\_\_

President.

Attest: \_\_\_\_\_,

Secretary.

TUNGSTEN PRODUCTS COMPANY,

By \_\_\_\_\_

President.

Attest: \_\_\_\_\_,

Secretary.

I hereby approve the foregoing contract on behalf of the creditors of the parties of the first part and consent to the same.

\_\_\_\_\_

Trustees for Creditors.

Pursuant to the above and foregoing written waiver of Notice, a special meeting of the Board of Directors of Tungsten Products Company, was held at 10:30 o'clock, P. M., the 16th day of August, 1919, at the office of the Company in Lovelock, Pershing County, Nevada.

Present, all of the Directors, namely: L. A. Friedman, J. G. Huntington, R. Nenzel, C. H. Jones, and H. J. Murrish.

The meeting was called to order by President L. A. Friedman, who stated that the principal business to come before the meeting was the acceptance or rejection of an offer to purchase the



Company's real and personal property. On motion seconded and carried, the following Resolution was adopted: [810—203]

RESOLVED, that the regular rules be, and they are hereby suspended and that the Board proceed immediately to consider the special business to come before it.

W. J. Loring being personally present stated to the Board that he desired to purchase the entire property and holdings of the Company jointly with the entire property of Nevada Humboldt Tungsten Mines Company, and that he was ready and willing to pay the sum of \$333,333.33 for the properties of both companies. Mr. Loring presented to the Board a proposed contract of sale between this Company and Nevada Humboldt Tungsten Mines Company, on the one part, and W. J. Loring, on the other part. Thereupon Mr. H. J. Murrish offered the following resolution and moved its adoption:

WHEREAS, W. J. Loring has made an offer to this Company, jointly with Nevada Humboldt Tungsten Mines Company, to purchase the real and personal properties of this corporation and the real and personal properties of Nevada Humboldt Tungsten Mines Company for the sum of \$333,333.33 and have offered to enter into a binding sale agreement with this corporation and

WHEREAS, we, the Directors of Tungsten Products Company, are familiar with the properties of both corporations; and

WHEREAS, this corporation is a subsidiary Company to said Nevada Humboldt Tungsten Mines Company, and the capital stock of this Company, excepting the qualifying shares of the Directors, is held in trust for the shareholders of said Nevada Humboldt Tungsten Mines Company, and,

WHEREAS, the fair value of the properties is not in excess of said sum of \$333,333.33 and said sum is a fair consideration, and,

WHEREAS, this corporation and said Nevada Humboldt Tungsten Mines Company have become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it is for the best interest of this company, and its creditors, to accept the said offer of said Loring and sell said property to him,

RESOLVED, that this Company accept the offer of said W. J. Loring and that the President and Secretary of this corporation be, and they are hereby, authorized, directed and empowered to execute on behalf of this corporation an agreement or contract with said W. J. Loring, in the words and figures following:

FURTHER RESOLVED, that the president and Secretary of this Company be, and they are hereby authorized, empowered and directed to make, execute and deliver on behalf of this corporation and in [811—204] accordance with the terms of said contract, all necessary deeds, bills of sale and conveyances, transferring said property to said W. J. Loring.

FURTHER RESOLVED, that a meeting of the stockholders of this Company be called forthwith to meet at the office of the Company for the purpose of approving and further ratifying the sale of this Company's property, described in said contract, to said W. J. Loring.

The motion that said resolution be adopted was duly seconded by C. H. Jones, and was unanimously carried.

There being no further business to come before the meeting, same was adjourned.

R. NENZEL,  
Secretary.

We, the undersigned, Directors of the Tungsten Products Company, do hereby approve the foregoing minutes and ratify and confirm each and every of the Resolutions therein set forth.

L. A. FRIEDMAN.

R. NENZEL.

H. J. MURRISH.

C. H. JONES.

JOHN G. HUNTINGTON.

#### CERTIFICATE OF SECRETARY.

I, R. Nenzel, Secretary of Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the above and foregoing is a full, true and correct transcript of the Minutes of a special meeting of the Board of Directors of said Tungsten Products Company, held on the 16th day of August, 1919. [812—205]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation this 20th day of August, 1919.

(Seal)

R. NENZEL,  
Secretary.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Minutes Products Co., Aug. 16/19. Defts. Ex. "A-13." Filed Sept. 22, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "A-14."**

**MINUTES OF THE SPECIAL MEETING OF  
THE STOCKHOLDERS OF TUNGSTEN  
PRODUCTS COMPANY.**

Held at Lovelock, Nevada, August 16th, 1919, at  
11:00 o'clock, P. M.

**WAIVER OF NOTICE.**

We, the undersigned owners of all of the issued and outstanding capital stock of Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby waive notice of the time, place and purpose of holding a special meeting of the stockholders of said corporation and do hereby fix the 16th day of August, 1919, at 11:00 o'clock P. M., as the time for such meeting, and the office of the Company in the City of Lovelock, Pershing County, Nevada, as the place of such meeting, and do hereby consent that any and all business of every kind and nature pertaining to the interests of said Company may be



considered and acted upon at said meeting. [813—206]

WITNESS OUR HANDS, this 16th day of August, 1919.

L. A. Friedman	Owning	1,000 Shares
L. A. Friedman, Trustee	Owning	94,680 Shares
R. Nenzel	Owning	1,000 Shares
H. J. Murrish	Owning	1,000 Shares
C. H. Jones	Owning	1,000 Shares
John G. Huntington	Owning	1,000 Shares

Filed August 16, 1919.

R. NENZEL,  
Secretary.

Pursuant to the foregoing Waiver of Notice signed by all of the stockholders of the Tungsten Products Company, a special meeting of the stockholders of said Tungsten Products Company was held at the office of the Company in the City of Lovelock, Pershing County, Nevada, on the 16th day of August, 1919, at 11:00 o'clock, P. M.

The meeting was called to order by Mr. L. A. Friedman who was, upon motion seconded and carried, elected Chairman of the meeting, and R. Nenzel was elected Secretary thereof.

There were found to be present the following capital stock:

Name	Number of Shares
L. A. Friedman .....	1,000
L. A. Friedman, Trustee .....	94,680
H. J. Murrish .....	1,000
R. Nenzel .....	1,000
C. H. Jones .....	1,000

and the following stock was represented and present by proxy, duly filed:

Name	No. of Shares	Name of Proxy
John G. Huntington	1,000	R. Nenzel

The Chairman, on motion seconded and carried, appointed H. J. Murrish to pass upon the proxies filed with the Secretary. [814—207] Mr. Murrish reported his approval of the proxy of John G. Huntington to R. Nenzel and that said proxy was in proper form and had been duly filed.

All of the issued and outstanding capital stock of the corporation being represented and present, the Chairman declared the meeting to be duly organized for the purpose of considering the business to come before it.

The Chairman then stated that the principal purpose for which the meeting had been called was to take action for or against the ratification of a contract for the sale of the entire property holdings of the corporation, which contract was between Tungsten Products Company and Nevada Humboldt Tungsten Mines Company, on the one part, and W. J. Loring, on the other part, and which provided for the sale of this company, together with the entire property holdings of the Nevada Humboldt Tungsten Mines Company, for a total consideration of \$333,333.33. A copy of said contract was exhibited to the stockholders for inspection and consideration and the minutes of the Directors' meeting, previously held, approving said contract and recommending its adoption and acceptance and exe-

cution by the Company were read by the Secretary. Thereupon, and after discussion, H. J. Murrish offered the following Resolution and moved its adoption:

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation a certain contract and agreement made between this Company and Nevada Humboldt Tungsten Mines Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California, on the other part, which contract provided for the sale of this company's property to said W. J. Loring, jointly with the property of the Nevada Humboldt Tungsten Mines Company, for a consideration of \$333,333.33 be, and the same is hereby ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had [815—208] been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this Company.

The motion that said Resolution be adopted was duly seconded by R. Nenzel.

A vote was then taken which resulted in 99,680 shares being voted in favor of the motion that said Resolution be adopted, and there being no stock voted against said motion, the Chairman declared the said resolution to be duly adopted.

H. J. Murrish then offered the following Resolution and moved its adoption:

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Nevada Humboldt Tungsten Mines Company to purchase the real and personal property of this corporation and the real and personal property of said Nevada Humboldt Tungsten Mines Company for the sum of \$333,333.-33, and

WHEREAS, the Board of Directors of this Company, have, by Resolution, recommended that this Company accept the said offer and sell to W. J. Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Nevada Humboldt Tungsten Mines Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company and its creditors, to accept the offer of said Loring and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company



and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already in writing ratified and approved the said contract and the proposed sale of this Company's property, and,

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness [816—209] of the Company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one,

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds and Bills of Sale to all of the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation.

The motion that said resolution be adopted was duly seconded by R. Nenzel.

A vote was then taken which resulted in 99,680 shares being voted in favor of the motion that said

Resolution be adopted, and there being no stock voted against said motion, the Chairman declared the said Resolution to be duly adopted.

There being no further business before the meeting, it was up<sup>on</sup> motion of C. H. Jones, seconded and carried, adjourned.

R. NENZEL,  
Secretary.

We, the undersigned, owners of all of the outstanding capital stock of said Tungsten Products Company do hereby approve the foregoing Minutes and ratify and confirm the proceedings and Resolutions thereat had and adopted.

L. A. FRIEDMAN.

R. NENZEL.

H. J. MURRISH.

(Sig.) JOHN G. HUNTINGTON.

C. H. JONES. [817—210]

We, the undersigned, Chairman and Secretary, respectively, of the special meeting of the stockholders of Tungsten Products Company, held at the office of the Company on the 16th day of August, 1919, at 11:00 o'clock, P. M., do hereby certify that the foregoing is a full, true and correct record of the Minutes of said meeting and the Resolutions there at adopted.

IN WITNESS WHEREOF, we have hereunto set our hands and seal of said corporation, this 16th day of August, 1919.

L. A. FRIEDMAN,  
Chairman.

R. NENZEL,  
Secretary.

CERTIFICATE OF SECRETARY.

I, R. Nenzel, Secretary of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the above and foregoing is a full, true and correct transcript of the Minutes of a special meeting of the stockholders of said Tungsten Products Company, held on the 16th day of August, 1919.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation this 20th day of August, 1919.

(Seal)

R. NENZEL,  
Secretary. [818—211]

State of Nevada,  
County of Pershing,—ss.

On this first day of September, 1919, personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel, known to me to be the same person described in and who executed the attached instrument as Secretary of Tungsten Products Company, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned, as such Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Official Seal the day and year, in this certificate, first above written.

(Seal)

BOOTH B. GOODMAN,  
Notary Public.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Minutes of Special Meeting of Stockholders of Products Co., Aug. 16/19. Defts. Ex. "A-14." Filed Sept. 22d, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "A-15."**

**WAIVER OF NOTICE.**

We, the undersigned, Directors of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby waive all notice of the time, place and purpose of holding a special meeting of the Board of Directors of said Company, and hereby fix the time for such meeting as the 23d day of August, 1919, at three o'clock in the afternoon of said day, and the place of such meeting as the office of the Company in the City of Lovelock, Pershing County, Nevada, and hereby consent that any and all matters and business in any way pertaining to or effecting [819—212] the interests of the Company may be acted upon at said meeting.

WITNESS OUR HANDS this 23d day of August, 1919.

L. A. FRIEDMAN.

R. NENZEL.

H. J. MURRISH.

C. H. JONES.

J. G. HUNTINGTON.



Filed August 23d, 1919.

R. NENZEL,  
Secretary.

MINUTES OF SPECIAL MEETING OF BOARD  
OF DIRECTORS OF TUNGSTEN PRO-  
DUCTS COMPANY.

Held in Lovelock, Nevada, August 23d, 1919.

Pursuant to the foregoing written Waiver of Notice, signed by all of the Directors, a meeting of the Board of Directors of Tungsten Products Company was held at the office of the Company, in the City of Lovelock, County of Pershing, State of Nevada, on the 23d day of August, 1919, at three o'clock in the afternoon.

There being a quorum present the meeting was called to order by President L. A. Friedman.

The minutes of the previous meeting held on the 16th day of August, 1919, were read, and on motion of H. J. Murrish, seconded and carried, the same were approved as read.

On Motion of H. J. Murrish, seconded by C. H. Jones, and carried, the following resolution was adopted: [820—213]

WHEREAS, the stockholders of this corporation have, by resolution, duly adopted, approved and ratified the contract heretofore entered into by this Company with W. J. Loring, of the City and County of San Francisco, State of California, for the sale of properties of this Company therein described, together with the properties of Nevada Humboldt Tungsten Mines Company, for a consideration of

\$333,333.33, and have directed this Board to cause the said contract to be carried out and performed on the part of this company, and

WHEREAS, the form of mortgage to be given by said Loring as security for said purchase price has been inspected by this Board and the same has been found satisfactory in all particulars,

RESOLVED, that the President and Secretary of this Company, be, and they are hereby, authorized, empowered and directed to accept from said W. J. Loring a mortgage in the form presented and upon receipt of said mortgage, duly executed by said W. J. Loring, to make, execute and deliver to said W. J. Loring good and sufficient deeds of conveyance, bills of sale and assignments, conveying to said W. J. Loring all of the property of this corporation, according to the terms of that certain agreement dated the 16th day of August, 1919, made by and between this Company and Nevada Humboldt Tungsten Mines Company, on the one part, and said W. J. Loring on the other part, and to do all other acts and things necessary or convenient to carry out the terms of said contract on the part of this corporation.

There being no further business to come before the meeting it was, on motion seconded and carried, adjourned.

R. NENZEL,  
Secretary.

I, R. Nenzel, Secretary of Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada,

do hereby certify the foregoing is a full, true and correct transcript of the minutes of a special meeting of the Board of Directors of said corporation, held on the 23d day of August, 1919.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation this 1st day of September, A. D. 1919.

(Seal)

R. NENZEL,  
Secretary. [821—214]

State of Nevada,  
County of Pershing,—ss.

On this first day of September, 1919, personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. NENZEL, known to me to be the same person described in and who executed the attached instrument as Secretary of TUNGSTEN PRODUCTS COMPANY, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned, as such Secretary.

IN WITNESS WHEREOF I have hereto set my hand and affixed my Official Seal the day and year, in this certificate, first above written.

(Seal)

BOOTH B. GOODMAN,  
Notary Public.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Waiver of Notice of Meeting Directors' Tungsten Products Co. & Minutes. Aug. 23, 19. Defts. Ex. "A-15." Filed Sept. 22, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "A-16."****WAIVER OF NOTICE.**

We, the undersigned, Directors of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby waive all notice of the time, place and purpose of holding a special meeting of the Board of Directors of said corporation, and do hereby fix the time for such meeting as the 23d day of August, 1919, at 3:30 o'clock P. M., and the [822—215] place of such meeting as the office of the Company in the City of Lovelock, Pershing County, Nevada, and hereby consent that any and all business in any way affecting the interests of the Company may be acted upon at such meeting.

WITNESS OUR HANDS this 23d day of August, 1919.

L. A. FRIEDMAN.

R. NENZEL.

H. J. MURRISH.

C. H. JONES.

C. W. POOLE.

Filed August 23d, 1919.

R. NENZEL.

Secretary.

**MINUTES OF SPECIAL MEETING OF BOARD  
OF DIRECTORS OF NEVADA HUM-  
BOLDT TUNGSTEN MINES COMPANY.**

Held in Lovelock, Nevada, August 23d, 1919.

Pursuant to the foregoing written Waiver of



Notice, signed by all of the Directors, a meeting of the Board of Directors of Nevada Humboldt Tungsten Mines Company was held at the office of the Company, in the City of Lovelock, County of Pershing, State of Nevada, on the 23d day of August, 1919, at three-thirty o'clock in the afternoon.

There being a quorum present the meeting was called to order by President L. A. Friedman.

The minutes of the previous meeting, held on the 16th day of August, 1919, were read, and on motion of H. J. Murrish, seconded and carried, the same were approved as read.

On motion of H. J. Murrish, seconded by C. H. Jones, [823—216] and carried the following resolution was adopted:

WHEREAS, the stockholders of this corporation have, by resolution, duly adopted, approved and ratified the contract heretofore entered into by this Company with W. J. Loring, of the City and County of San Francisco, State of California, for the sale of the properties of this Company therein described, together with the properties of Tungsten Products Company, for a consideration of \$333,333.33, and have directed this Board to cause the said contract to be carried out and performed on the part of this Company, and,

WHEREAS, the form of mortgage to be given by said Loring as security for said purchase price has been inspected by this Board and the same has been found satisfactory in all particulars,

Resolved, that the President and Secretary of this Company, be, and they are hereby, authorized, empowered and directed to accept from said W. J. Loring a mortgage in the form presented and upon receipt of said mortgage, duly executed by said W. J. Loring, to make, execute and deliver to said W. J. Loring good and sufficient deeds of conveyance, bills of sale and assignments, conveying to said W. J. Loring all of the property of this corporation, according to the terms of that certain agreement dated the 16th day of August, 1919, made by and between this Company and Tungsten Products Company on the one part, and said W. J. Loring, on the other part, and to do all other acts and things necessary or convenient to carry out the terms of said contract on the part of this corporation.

There being no further business to come before the meeting, it was, on motion seconded and carried, adjourned.

R. NENZEL.

Secretary.

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify the foregoing is a full, true and correct transcript of the Minutes of a special meeting of the Board of Directors of said corporation, held on the 23d day of August, 1919.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation this 1st day of September, A. D. 1919.

(Seal)

R. NENZEL.

[824—217]

Secretary

State of Nevada,  
County of Pershing,—ss.

On this first day of September, 1919, personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel, known to me to be the same person described in and who executed the attached certificate as Secretary Nevada Humboldt Tungsten Mines Company, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned, as such Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official Seal the day and year, in this certificate, first above written.

(Seal)

BOOTH B. GOODMAN,  
Notary Public.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Waiver of notice of Nev. Hum. Tungsten Directors. Meeting Aug. 23, 19 and Minutes. Defts. Ex. No. "A-16." Filed Sept. 22, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "A-17."****MINUTES OF THE SPECIAL MEETING OF  
THE STOCKHOLDERS OF NEVADA  
HUMBOLDT TUNGSTEN MINES COM-  
PANY.**

Held at Lovelock, Nevada, August 23d, 1919, at  
2:00 o'clock, P. M.

Pursuant to written notice given in accordance with the By-Laws of the corporation, a special meeting of the stockholders of the Nevada Humboldt Tungsten Mines Company was held in the office of the company in the City of Lovelock, Pershing County, Nevada, on the 23d day of August, 1919, at 2:00 o'clock, P. M.,

The meeting was called to order by L. A. Friedman, President of the Company, who was unanimously chosen Chairman, and [825—218] thereupon R. Nenzel, Secretary of the Company, was chosen Secretary of the meeting.

R. Nenzel Secretary of the Company, stated that written notice of the time, place and purpose of the holding of this meeting had been mailed to all persons owning stock in the corporation, in accordance with the provisions of the By-Laws of the Company. Thereupon Mr. Nenzel exhibited a copy of the notice, together with Affidavits showing that copies of the said notice had been properly mailed to all stockholders as provided for in the By-Laws. The Affidavits were then ordered filed with the Secretary.



The Chairman then ordered the Secretary to call the Roll and the following stock was found to be personally represented:

Name	Number of Shares
L. A. Friedman.....	39,679
J. T. Goodin.....	63,918
C. H. Jones.....	90,500
H. J. Murrish.....	102,769
Gertrude K. Olfers.....	9,100
R. Nenzel.....	103,674
V. A. Twigg.....	3,000
Frank Carlstrom.....	60,000
C. W. Poole.....	219,160

and the following stock was represented and present by proxy, duly filed.

Name	Number of Shares	Name of Proxy
Lena J. Friedman	250,00	R. Nenzel

The Chairman, on motion seconded and carried, appointed H. J. Murrish to pass upon the proxies filed with the Secretary. Mr. Murrish reported his approval of the proxy of Lena J. Friedman to R. Nenzel and that said proxy was in proper form and had been duly filed. [826—219]

More than ninety-four per cent of the total issued capital stock of the corporation being present and either represented in person or by proxy, the chairman declared the meeting to be duly organized for the consideration of the business to come before it.

A protest from stockholder David Taylor was received and read and was ordered filed with the Secretary.

The Chairman then stated that the special purpose for which the meeting had been called, as stated in the notice thereof, was for the purpose of ratifying and authorizing the sale of the entire real and personal property of the corporation to W. J. Loring, jointly with the entire property holdings of the Tungsten Products Company, for the sum of \$333,333.33, and also for the purpose of ratifying the action of the Board of Directors and the President and Secretary of the corporation in entering into and executing, on behalf of this Company, a sale contract made by Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, on the one part, and W. J. Loring on the other part. A copy of said contract was exhibited to the stockholders for inspection.

Mr. H. J. Murrish then offered the following Resolution and moved its adoption:

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation, a certain contract and agreement made between this company and Tungsten Products Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California, on the other part, which contract provided for the sale of this Company's property to said W. J. Loring, jointly with the property of the Tungsten Products Company, for a consideration [827—220] of \$333,333.33 be, and the same is hereby ratified, confirmed and approved, and the acts of said officers are hereby

adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this company.

The motion that said Resolution be adopted was duly seconded by J. T. Goodin.

A vote was then taken which resulted in 941,800 shares being voted in favor of the motion that said Resolution be adopted, and there being no stock voted against said motion, the Chairman declared the said Resolution to be duly adopted.

H. J. Murrish then offered the following Resolution and moved its adoption:

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Tungsten Products Company to purchase the real and personal property of this corporation and the real and personal property of said Tungsten Products Company for the sum of \$333,333.33, and

WHEREAS, the Board of Directors of this Company, have, by Resolution, recommended that this Company accept the said offer and sell to W. J.

Loring the real and personal property [828—221] of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Tungsten Products Company, which is a subsidiary corporation to this Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company, and its creditors, to accept the offer of said Loring and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already, in writing, ratified and approved the said contract and the proposed sale of this Company's property, and,

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the Company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one.

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds



and Bills of Sale to all of the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in [829—222] said contract to said Loring, under the terms of and as provided in said contract,

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation.

The motion that said Resolution be adopted was duly seconded by J. T. Goodin.

A vote was then taken which resulted in 941,800 shares being voted in favor of the motion that said Resolution be adopted, and there being no stock voted against said motion, the Chairman declared the said Resolution to be duly adopted.

Mr. H. J. Murrish then offered the following Resolution and moved its adoption:

RESOLVED, that the action of L. A. Friedman, as Trustee for the stockholders of this corporation in voting 94,680 shares of the capital stock of the Tungsten Products Company in favor of the sale of the property of said Tungsten Products Company to W. J. Loring at a meeting of the stockholders of said Tungsten Products Company, held August 16th, 1919, be, and the same is hereby ratified, approved and confirmed and,

FURTHER RESOLVED, that the stockholders of this corporation do hereby adopt the said act

of said L. A. Friedman, Trustee, as their own act and deed.

The motion that said Resolution be adopted was duly seconded by R. Nenzel, and a vote of the stockholders was then taken which resulted in 941,800 shares of stock being cast in favor of the motion that said Resolution be adopted and none against the said motion. Thereupon the Chairman declared [830—223] the said Resolution to be duly adopted.

On motion of H. J. Murrish, seconded and carried, the meeting adjourned.

L. A. FRIEDMAN,  
Chairman.

Attest: R. NENZEL,  
Secretary.

We, the undersigned stockholders of the Nevada Humboldt Tungsten Mines Company, do hereby approve the foregoing Minutes and ratify and confirm the proceedings and resolutions thereat had and adopted.

L. A. FRIEDMAN.  
R. NENZEL.  
H. J. MURRISH.  
C. H. JONES.  
FRANK CARLSTROM.  
J. T. GOODIN.  
C. W. POOLE.  
V. A. TWIGG.  
GERTRUDE K. OLFERS.  
LENA FRIEDMAN.

By R. NENZEL, Proxy.  
JOHN G. HUNTINGTON.

CERTIFICATE.

I, R. NENZEL, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the foregoing is a full, true and correct transcript of the minutes of a meeting of the stockholders of said corporation held in the office of the Company in the City of [831—224] Lovelock, Pershing County, Nevada, on the 23d day of August, 1919, at two o'clock P. M.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said corporation this twenty-third day of August, 1919.

[Seal]

R. NENZEL,

Secretary.

State of Nevada,

County of Pershing,—ss.

On this 1st day of September, 1919, personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel, known to me to be the same person described in and who executed the attached certificate as Secretary Nevada Humboldt Tungsten Mines Company, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned, as such Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Official Seal the day and year, in this certificate, first above written.

[Seal]

BOOTH B. GOODMAN,

Notary Public.

[Endorsed]: No. B-7. U. S. District Court, District of Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Minutes of stockholders of Nev. Hum. Tungsten Co. Aug. 23d/19. Defts. Ex. "A-17." Filed Sept. 22d, 1920. T. J. Edwards, Clerk. Booth B. Goodman, Attorney at Law, Lovelock, Nevada.

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**Defendants' Exhibit "A-18."**

**WAIVER OF NOTICE.**

We, the undersigned, Directors of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby waive all notice of the time, place and purpose of holding a special meeting of the Board of Directors of said corporation, [832—225] and do hereby fix the time for such meeting as the 23d day of August, 1919, at 3:30 o'clock P. M., and the place of such meeting as the office of the Company in the City of Lovelock, Pershing County, Nevada, and hereby consent that any and all business in any way affecting the interests of the Company may be acted upon at such meeting.

WITNESS OUR HANDS THIS 23d day of August, 1919.

L. A. FRIEDMAN.

R. NENZEL.

H. J. MURRISH.

C. H. JONES.

C. W. POOLE.



Filed August 23d, 1919.

R. NENZEL,  
Secretary.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY.

Held in Lovelock, Nevada, August 23rd, 1919.

Pursuant to the foregoing written Waiver of Notice, signed by all of the Directors, a meeting of the Board of Directors of Nevada Humboldt Tungsten Mines Company was held at the office of the Company, in the City of Lovelock, County of Pershing, State of Nevada, on the 23rd day of August, 1919, at three-thirty o'clock in the afternoon.

There being a quorum present the meeting was called to order by President L. A. Friedman.

The minutes of the previous meeting, held on the 16th day of August, 1919, were read, and on motion of H. J. Murrish, seconded and carried, the same were approved as read.

On motion of H. J. Murrish, seconded by C. H. Jones, [833—226] and carried, the following resolution was adopted:

WHEREAS, the stockholders of this corporation have by resolution, duly adopted, approved and ratified the contract heretofore entered into by this Company with W. J. Loring of the City and County of San Francisco, State of California, for the sale of properties of this Company therein described, together with the properties of Tungsten Products Company, for a consideration of \$333,333.33, and have directed this Board to cause the said contract

to be carried out and performed on the part of this Company, and,

WHEREAS, the form of mortgage to be given by said Loring as security for said purchase price has been inspected by this Board and the same has been found satisfactory in all particulars,

RESOLVED, that the President and Secretary of this Company, be, and they are hereby, authorized, empowered and directed to accept from said W. J. Loring a mortgage in the form presented and upon receipt of said mortgage, duly executed by said W. J. Loring, to make, execute and deliver to said W. J. Loring good and sufficient deeds of conveyance, bills of sale and assignments, conveying to said W. J. Loring all of the property of this corporation, according to the terms of that certain agreement dated the 16th day of August, 1919, made by and between this Company and Tungsten Products Company, on the one part, and said W. J. Loring, on the other part, and to do all other acts and things necessary or convenient to carry out the terms of said contract on the part of this corporation.

There being no further business to come before the meeting, it was, on motion seconded and carried, adjourned.

R. NENZEL,

Secretary.

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify the foregoing

is a full, true and correct transcript of the Minutes of a special meeting of the Board of Directors of said corporation, held on the 23rd day of August, 1919.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said corporation this 1st day of September, A. D. 1919.

R. NENZEL,  
Secretary. [834—227]

State of Nevada,  
County of Pershing,—ss.

On this 1st day of September, 1919, personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel, known to me to be the same person described in and who executed the attached certificate as Secretary Nevada Humboldt Tungsten Mines Company, who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned, as such Secretary.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Official Seal the day and year, in this certificate, first above written.

[Seal] BOOTH B. GOODMAN,  
Notary Public.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Waiver of Notice of Director's Meeting. Aug. 23/19. & Minutes of Meeting. Defts. Ex. No. "A-18." Filed Sept. 22d, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "A-19."****MINUTES OF SPECIAL MEETING OF THE  
STOCKHOLDERS OF NEVADA HUM-  
BOLDT TUNGSTEN MINES COMPANY.**

Held at Lovelock, Nevada, April 19th, 1920, at  
2 o'clock P. M.

Pursuant to written notices heretofore duly given by the secretary of this corporation, a Special Meeting of the stockholders of Nevada Humboldt Tungsten Mines Company was held in the office of the Company, in the City of Lovelock, County of Pershing, State of Nevada, on the 19th day of April, 1920, at 2 o'clock, P. M.

The meeting was called to order by H. J. Murrish, Vice-President of the Company, who took the chair and presided at said meeting, and R. Nenzel, Secretary of the Company, acted as the Secretary of said meeting.

R. Nenzel, Secretary of the Company, thereupon read [835—228] to the meeting a written request of the majority of the Board of Directors for the calling of said meeting, and also the call for said meeting thereupon issued by the Secretary, both of which documents have been thereafter and heretofore filed in the archives of the Company.

Thereupon R. Nenzel, Secretary of the Company, read to the meeting the notice of said meeting mailed by him to each Stockholder of record of the Corporation, in accordance with law and the By-Laws of the Company, together with his affidavit of the due mailing the same addressed to each



stockholder of record, at his last known place of business, in sealed envelope, postage prepaid, in accordance with the provisions of the statute of the State of Nevada, and the By-Laws of the Company, and a copy of said Notice and Affidavit was ordered filed with the Secretary.

The chairman then ordered the Secretary to call the roll, and the following stock was found to be personally represented:

Name.	No. of Shares.
J. T. Goodin.....	88,142
C. H. Jones.....	90,500
H. J. Murrish.....	102,769
Gertrude K. Olfers.....	9,100
R. Nenzel .....	93,674
V. A. Twigg.....	3,000
Frank Carlstrom .....	60,000
C. W. Poole.....	198,439
Lena J. Friedman.....	250,000
John G. Huntington.....	45,250

and the following stock was represented and present by proxies, duly filed:

Name	No. of Shares	Name of Proxy
L. A. Friedman	40,926	C. H. Jones
B. H. Morrin	10,000	R. Nenzel

[836—229]

making 991,800 shares present in person and by proxy out of the total issue of one million shares.

The chairman, on motion, seconded and carried, appointed J. T. Goodin to pass upon the proxies filed with the Secretary. Mr. Goodin reported his

approval of the proxy of L. A. Friedman to C. H. Jones, and of the proxy from B. H. Morrin to R. Nenzel, and that said proxies were in proper form and had been duly filed.

Upon motion duly seconded, the report of said J. T. Goodin, with reference to said proxies, was accepted and approved.

More than ninety-nine per cent of the total issued capital stock of the Corporation being present, and either represented in person or by proxy, the chairman declared the meeting to be duly organized for the consideration of the business to come before it.

The Secretary thereupon read the written request of the majority of the Board of Directors for the calling of said Special Meeting of the Stockholders, and the call issued by the Secretary thereupon, which said request for said call and said call itself had been filed by and with the Secretary of the corporation. Thereupon the Secretary read the Notice of the meeting mailed by him to each stockholder of record, in accordance with the provisions of the Statutes of the State of Nevada and the By-Laws of the corporation.

The Chairman, in addition to the reading of said documents by the Secretary, giving notice of the purpose of the meeting, presented to the meeting, and the Secretary read, a copy of the Order to Show Cause and Restraining Order issued on the [837—230] 17th day of April, 1920, out of the United States District Court, in and for the District of Nevada, in that certain action therein filed on the 17th day of April, 1920, entitled, David

Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a corporation.

Thereupon J. T. Goodin introduced the following resolution and moved its adoption:

WHEREAS this meeting has been called for the purpose of considering, acting and voting upon certain propositions, all of which more fully appear from the written notice of the said meeting to which reference is hereby made, and

WHEREAS, there is present at this meeting, by person or by proxy, stockholders of the Nevada Humboldt Tungsten Mines Company representing 991,800 shares out of the total issue of one million shares, and

WHEREAS, stockholders here assembled are desirous of voting, and would vote if permitted to vote, in favor of the said propositions referred to in the said notice of said meeting, and

WHEREAS, in view of the Restraining Order that has been issued out of the United States District Court in the District of Nevada, and which has been read to this meeting, it is necessary and proper that no action be taken by this meeting until the further order of the said District Court respecting the said Restraining Order has been made, and

WHEREAS the hearing of said matter has been set by said District Court on the 27th day of April, 1920, at ten o'clock A. M.

NOW THEREFORE BE IT RESOLVED to now adjourn, to reassemble [838—231] on the 29th day of April, 1920, at this same place of meeting at the hour of two o'clock, P. M., for the purpose of

then and there proceeding with the business for which the said meeting has been called in the event that said Restraining Order shall have at said time been modified or set aside so as to permit of such action, or then and there to take such further adjournment or action as may be necessary or proper.

The motion that said resolution be adopted was duly seconded by C. W. Poole. Thereupon the roll was called and a vote taken on the motion that said resolution be adopted with the result that all of the capital stock represented at said meeting either in person or by proxy was voted in the affirmative and in favor of the motion that said resolution be adopted, 991,800 shares being voted in favor of the adoption of said resolution.

The meeting thereupon adjourned to re-convene on the 29th day of April, 1920, at two o'clock P. M.

R. NENZEL,

Secretary.

I, R. Nenzel, the duly elected, qualified and acting secretary of the Nevada Humboldt Tungsten Mines Company, a Nevada corporation, do hereby certify that the attached and foregoing is a full, true and correct transcript of the minutes of a special meeting of the stockholders of said corporation duly called and held at the office of the Company in the City of Lovelock, County of Pershing, State of Nevada, on the 19th day of April, 1920.

IN WITNESS WHEREOF I have hereunto set



my hand and affixed the Seal of said Corporation this 20th day of April, 1920.

R. NENZEL, (Seal)  
Secretary. [839—232]

[Endorsed]: Minutes. Special Meeting of Stockholders of the Nevada Humboldt Tungsten Mines Company, held April 19th, 1920. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Defts. Ex. "A-19." Filed Sept. 22d, 1920. T. J. Edwards, Clerk. Booth B. Goodman, Attorney and Counsellor, Lovelock, Nevada.

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**Defendants' Exhibit "A-20."**

**MINING DEED.**

THIS INDENTURE, Made this twenty-third day of August, A. D. one thousand nine hundred and nineteen, by and between NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the party of the first part, and W. J. LORING, of the City and County of San Francisco, State of California, the party of the second part,

**WITNESSETH:**

That the said party of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States, and other valuable considerations to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents,

GRANT, CONVEY, REMISE, RELEASE and FOREVER QUIT-CLAIM unto the said party of the second part and to his heirs and assigns forever, all those certain Lode Mining Claims and mineral bearing lodes, veins and deposits, situated in an unorganized Mining District, in the County of Pershing, (Formerly the County of Humboldt), State of Nevada, and described as follows, to wit:

Gross Mine No. 2; Gross Mine No. 3; White Rock Mine; [840—233] and Sky High; all Lode Mining Claims, situated about seven miles Northwest of the Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of Humboldt County, Nevada, in Book "S" of Notices at page 502 et. seq., reference to said records being hereby expressly made for greater certainty of description. Said claims being the same property described in that certain deed to Nevada Humboldt Tungsten Mines Company, a Nevada corporation, dated February 17th, 1917, and recorded in Book "53" of Deeds, at page 146, of the records of the County Recorder of said County of Humboldt, State of Nevada.

TOGETHER with all the dips, spurs, angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the

remainder and remainders, reversion and reversions, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

AND THE PARTY OF THE FIRST PART does hereby covenant with the party of the second part that it has full right, power and authority to sell and convey the said premises, as above done, and that the same are now free and clear from all encumbrances whatever, made or suffered by the party of the first part. [841—234]

IN WITNESS WHEREOF the party of the first part has, by resolutions of its Board of Directors and Stockholders, duly adopted, caused its corporate name to be subscribed hereto by its President and Secretary, and its corporate seal to be hereto affixed, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY.

By L. A. FRIEDMAN,  
President.

[Seal]

Attest R. NENZEL,  
Secretary.

(NOTE: Nine documentary stamps of \$10.00 each were attached to this instrument.)

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared be-

fore me Booth B. Goodman, a Notary Public in and for Humboldt County, L. A. FRIEDMAN, known to me to be the President of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

[Seal]                      BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada.

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. NENZEL, known to me to be the Secretary of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is [842—235] ac-



quainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

[Seal]

BOOTH B. GOODMAN,

Notary Public in and for the County of Humboldt,  
State of Nevada.

[Endorsed]: Recorded at request of Booth B. Goodman, Aug. 23, 1919, at 51 Min. past 4 o'clock P. M. Book 1, page 70-71 of Deeds. Records of Pershing County, Nev. C. L. Young, County Recorder. By ———, Deputy. File No. 338. Mining Deed. Nevada Humboldt Tungsten Mines Company to W. J. Loring. Dated August 23d, 1919. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Defts. Ex. No. "20-A." Filed Sept. 22, 1920. T. J. Edwards, Clerk. Booth B. Goodman, Attorney at Law, Lovelock, Nevada.

**Defendants' Exhibit "A-21."****DEED.**

THIS INDENTURE, Made this twenty-third day of August, A. D. One-thousand nine hundred and nineteen, by and between TUNGSTEN PRODUCTS COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the party of the first part, and W. J. LORING, of the City and County of San Francisco, State of California, the party of the second part,

**WITNESSETH:**

That the said party of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of [843—236] the United States, and other valuable considerations, to it in hand paid, the receipt whereof is hereby acknowledged, does by these presents GRANT, BARGAIN and SELL and CONVEY and CONFIRM unto the said party of the second part and to his heirs and assigns forever all that certain lot, piece or parcel of land, situate, lying and being in the County of Pershing, (formerly the County of Humboldt), State of Nevada, and bounded and described as follows, to wit:

Beginning at the South-east corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mount Diablo Base and Meridian; thence North one-hundred (100) feet; thence East five hundred (500) feet; thence South six-hundred (600) feet; thence West six-

hundred (600) feet; thence North five-hundred (500) feet; thence East one-hundred (100) feet, to the place of beginning. Being the same property described in that certain deed thereof to Tungsten Products Company, a Nevada corporation, recorded in Book 1 of Deeds, at page 18, of the official records of the office of County Recorder of Pershing County, Nevada, to which record reference is hereby expressly made for greater certainty of description. Together with the concentrating mill, and all plants, fixtures, buildings and improvements thereon.

And also that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, the tract of land above described, flowing on or over the North-east quarter (N. E.  $\frac{1}{4}$ ) of Section Thirty-five (35), Township Thirty-four (34) North, Range Thirty-four (34) East, M. D. B. & M., together with the rights, privileges and [844—237] franchises thereto incident, appendant or appurtenant or therewith usually had and enjoyed. Being the same easement described in that certain deed thereof to the party of the first part, record of which appears in Book 1 of Deeds, at page 20, of the official records of the County Recorder of said Pershing County, State of Nevada, to which said record reference is hereby expressly made.

TOGETHER with all and singular the lands, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the remainder and remainders, reversion and reversions, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, and the easement above described, together with all and singular the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

IN WITNESS WHEREOF the party of the first part has, by resolutions of its Board of Directors and Stockholders, duly adopted, caused its corporate name to be hereunto subscribed by its President and Secretary, and its corporate seal to be hereto affixed, the day and year first above written.

TUNGSTEN PRODUCTS COMPANY,

By L. A. FRIEDMAN,

President.

(Documentary Stamps to the value of \$70.00 attached.)

[Seal] Attest: R. NENZEL,  
Secretary,

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, L. A. Friedman, known to me to be the President of the corporation that executed the [845—238] foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corpora-



tion, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

[Seal]


BOOTH B. GOODMAN,

Notary Public in and for the County of Humboldt,  
State of Nevada.

State of Nevada,

County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel known to me to be the Secretary of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of [846—239] Humboldt, the day and year in this certificate first above written.

[Seal]

BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt.  
State of Nevada.

[Endorsed]: Recorded at request of Booth B. Goodman. Aug. 23, 1919, at 50 Min. past 4 o'clock P. M., Book 1, page 68-69 of Deeds, Records of Pershing County, Nev. C. L. Young, County Recorder. By ———, Deputy. File No. 337. Grant Bargain and Sale Deed—Tungsten Products Co. to W. J. Loring. Dated August 23d, 1919. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Defts. Ex. No. "A-21." Filed Sept. 22, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "A-22."**

**DEED.**

THIS INDENTURE, Made this twenty-third day of August, A. D. one thousand nine hundred and nineteen, by and between NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the party of the first part, and W. J. LORING, of the City and County of San Francisco, State of California, the party of the second part,

WITNESSETH:

That the said party of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States, and other valuable considerations to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents, GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto the said party of the second part and to his heirs and assigns forever, all that certain lot, piece or parcel of land situated in the County of Pershing (formerly the County of Humboldt), State of Nevada, and particularly described as follows, to wit: [847—240]

Beginning at the East quarter corner of Section Twenty-seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East, Mount Diablo Base and Meridian; thence South, along the East line of said Section, to the South-west corner thereof; thence West, along the South line of said Section, to the South quarter corner thereof; thence Northwesterly, in a straight line, to the point or place of beginning, containing eighty (80) acres, according to the United States Public Surveys; said land being the same ground described in that certain deed to the party of the first part dated the 25th day of April, 1918, and recorded in the office of the County Recorder of Humboldt County, Nevada, in Book 53 of Deeds at Page 76; reference being hereby made to said deed and the record thereof for a more particular description of said land.

TOGETHER will all and singular the lands, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, or therewith usually had and enjoyed, and also the remainder and remainders, reversion and reversions, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF said Nevada Humboldt Tungsten Mines Company, has, by resolutions of its Board of Directors and Stockholders, duly adopted, caused its name to be subscribed hereto by its President and Secretary, and its corporate seal to be hereto affixed, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY.

By L. A. FRIEDMAN,  
President.

[Seal]

Attest: R. NENZEL,  
Secretary.

(NOTE: Documentary stamps to the value of \$90.00 attached to the above.) [848—241]

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman a Notary Public in and for Humboldt County, L. A. Friedman known



to me to be the President of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

(Seal)

BOOTH B. GOODMAN,

Notary Public in and for the County of Humboldt,  
State of Nevada.

State of Nevada,

County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman a Notary Public in and for Humboldt County, R. Nenzel known to me to be the Secretary of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the official of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were

made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

(Seal)                      BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada. [849—242]

[Endorsed]: Recorded at request of Booth B. Goodman, Aug. 23, 1919, at 52 Min. past 4 o'clock P. M., Book 1, page 71-72 of Deeds. Records of Pershing County, Nev. C. L. Young, County Recorder. By ———, Deputy. File No. 339. Grant Bargain and Sale Deed—Nevada Humboldt Tungsten Mines Company to W. J. Loring. Dated August 23d, 1919. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Defts. Ex. "A-22." Filed Sept. 22. 1920. T. J. Edwards, Clerk. Booth B. Goodman, Attorney at Law, Lovelock, Nevada.

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**Defendants' Exhibit "A-23."**

**ASSIGNMENT.**

KNOW ALL MEN BY THESE PRESENTS:  
That Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, both corporations organized and existing under and by virtue of the

laws of the State of Nevada, for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States and other valuable considerations to them in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, conveyed and set-over and by these presents do hereby sell, assign, transfer and set-over unto W. J. LORING, of the city and county of San Francisco, State of California, and his heirs, executors, administrators and assigns, all of the right, title, interest, claim and demand, in, to or of any moneys which is, or may be found to be due or payable to said Nevada Humboldt Tungsten Mines Company or Tungsten Products Company, from the Government of the United States of America by reason of any claim for relief, made by said Nevada Humboldt Tungsten Mines Company or Tungsten Products Company, (jointly or severally) under the provisions of that certain Act of the Congress of the United States of America known as "War Minerals Relief Act. Giving and granting unto said W. J. Loring full [850—243] power and authority to receive, collect and give acquittance for the same or any part thereof in the name of said Nevada Humboldt Tungsten Mines Company or Tungsten Products Company, or otherwise, but at his *won* cost.

And said Nevada Humboldt Tungsten Mines Company and Tungsten Products Company hereby covenant and agree that if said moneys or any part thereof shall be paid to them or either of them they

will immediately pay the same over to said W. J. Loring, or his assigns.

IN WITNESS WHEREOF said Nevada Humboldt Tungsten Mines Company and Tungsten Products Company have, by resolutions of their respective Boards of Directors and Stockholders, caused their corporate names to be subscribed hereto by their respective Presidents and Secretaries and their corporate seals to be hereto affixed this twenty-third day of August, 1919.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY.

By L. A. FRIEDMAN,  
President.

[Seal]

Attest: R. NENZEL,  
Secretary.

TUNGSTEN PRODUCTS COMPANY.

By L. A. FRIEDMAN,  
President.

[Seal]

Attest: R. NENZEL,  
Secretary. [851—244]

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, L. A. Friedman known to me to be the President of the corporation that executed the foregoing instrument and upon oath, did depose that he is the officer of said corporation as above



designated; that he is acquainted with the seal of said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

[Seal]                      BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada.

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel known to me to be the Secretary of the corporation that executed the foregoing instrument and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed

the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

[Seal]                      BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada. [852—245]

[Endorsed]: Assignment — Nevada Humboldt Tungsten Mines Company, and Tungsten Products Company to W. J. Loring. Dated August 23d, 1919. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Humb. T. M. Co. et al. Defts. Ex. No. "A-23." Filed Sept. 22, 1920. T. J. Edwards, Clerk. Booth B. Goodman, Attorney at Law, Lovelock, Nevada.

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**Defendants' Exhibit "A-24."**

**BILL OF SALE.**

KNOW ALL MEN BY THESE PRESENTS: THAT NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States, and other good and valuable consideration to it in hand paid by W. J. Loring, of the City and County of San Francisco, State of

California, the receipt whereof is hereby acknowledged, has granted, sold, conveyed, assigned, transferred and set-over and by these presents does hereby grant, sell, convey, assign, transfer and set over unto said W. J. Loring, his heirs, executors, administrators and assigns, the following goods and chattels, to wit:

All of the personal property, goods, and chattels now owned by said Nevada Humboldt Tungsten Mines Company, of any and every kind and description and wheresoever situated, whether hereinafter particularly described or not, excepting only the books and records and the corporate seal of said corporation, and except any item of cash in bank above the amount of \$195.46, and except supplies now at Mill City amounting to \$592.85 (being supplies from the following companies or [853—246] firms: Baker, Hamilton & Pacific Co. \$3.27, \$25.78, and \$19.10; B. B. G. The Gallagher Machinery Co. \$120; ~~The Giant Powder Co.~~ ~~\$813.40~~; Allis-Chalmers Mfg. Co. \$353.60, and the Stearns-Roger Co., \$71.10), and including the following goods and chattels, to wit:

All ore in dumps, at mills or in the mines; all buildings erected upon any lands heretofore owned by said corporation; all tungsten concentrates in the mill heretofore owned by Tungsten Products Company, or in the possession of W. J. Loring, Pacific Tungsten Company, or Wells-Fargo Nevada National Bank of San Francisco, PRO-

fifty

VIDED, HOWEVER, that ~~one~~ ~~hundred~~ tons of

concentrates hereby conveyed, being concentrates constructively in the possession of Wells-Fargo Nevada National Bank of San Francisco, is sold subject to the condition that said W. J. Loring shall not sell, remove or dispose of the same until they have been released from the lien of said Wells-Fargo Nevada National Bank by payment or securing of the indebtedness of said Nevada Humboldt Tungsten Mines Company to said Bank.

Also, all bills payable to Nevada Humboldt Tungsten Mines Company, including all moneys due from the sale of concentrates to Western Ore Purchasing Company, of Reno, Nevada, or from other persons, firms or corporations; all machinery of every kind and description, including engines; compressors; motors, belting cables, hoists, mine cars, tracks, buckets, skips, drilling steel, jack-hammers, stoping or drilling machines of every kind and description; all picks, shovels, blacksmiths', carpenters' or machinists' tools and equipment of every kind and description; all wagons and trucks; all motors and electrical supplies; all mine or mill supplies of every kind and description whatsoever or wheresoever situated, including [854—247] powder; all boarding-house and bunkhouse furniture, furnishings and equipment of every kind; Also, including in this conveyance (15,000) fifteen thousand shares of the capital stock of Mill City Development Company, a Nevada corporation, certificates for which will be endorsed and delivered with this bill of sale;



Also, all the right, title, interest, claim or demand of, in, or to any and all moneys which may be due, or which may hereafter be found to be due to said Nevada Humboldt Tungsten Mines Company from the Government of the United States by reason of any claim for relief which it has filed or presented under that certain Act of Congress commonly known as the War Minerals Relief Act, and, in brief, every article of personal property (including book-account credits) not expressly herein excepted,—

TO HAVE AND TO HOLD, all and singular, the said goods, chattels and personal property to the said W. J. LORING and to his heirs, executors, administrators and assigns forever.

And said NEVADA HUMBOLDT TUNGSTEN MINES COMPANY hereby covenants with the said W. J. Loring, grantee, his heirs, and assigns, that it is the lawful owner of the goods and chattels; that it has a good right to sell the same as aforesaid; and that it will warrant and defend the same against all lawful claims and demands of all persons.

IN WITNESS WHEREOF, said Nevada Humboldt Tungsten Mines Company has, by resolutions duly adopted, caused these presents to be executed by its President and Secretary and its corporate

seal to be hereto affixed this twenty-third day of August, A. D. 1919.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY,

[Seal] By L. A. FRIEDMAN,  
President. [855—248]  
[Seal] Attest: R. NENZEL,  
Secretary.

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, R. Nenzel known to me to be the Secretary of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

[Seal] BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada.

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me Booth B. Goodman, a Notary Public in and for Humboldt County, L. A. Friedman known to me to be the President of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of Humboldt, the day and year in this certificate first above written.

[Seal]                      BOOTH B. GOODMAN,  
Notary Public in and for the County of Humboldt,  
State of Nevada.

[Endorsed]: Bill of Sale—Nevada Humboldt Tungsten Mines Company [856—249] to W. J. Loring. Dated August 23, 1919. Recorded at request of Booth B. Goodman Aug. 23, 1919, at 54

min. past 4 o'clock P. M. Book 1, page 19-20-21 of Liens & Miscellaneous Records of Pershing County, Nev. C. L. Young, County Recorder. By ——— Deputy. File No. 341. No. B-7. U. S. Dist. of Nevada. Taylor vs. Nev. Humb. T. M. Co. et al. Defts. Ex. "A-24." Filed Sept. 22, 1920. T. J. Edwards, Clerk. John F. Davis, Attorney at Law, Humboldt Savings Bank Building. Telephone Douglas 3865, San Francisco, Cal.

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**Defendants' Exhibit "A-25."**

**MORTGAGE TO SECURE PURCHASE PRICE.**

THIS INDENTURE, made and entered into the 23d day of August, in the year of our Lord One Thousand Nine Hundred and Nineteen, by and between W. J. LORING, of the City and County of San Francisco, State of California, the party of the first part, and NEVADA TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and TUNGSTEN PRODUCTS COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the parties of the second part, WITNESSETH:

Whereas, the party of the first part has this day bought from the parties of the second part, and the parties of the second part have this day sold to the party of the first part, and to his heirs and assigns forever, all of the property hereinafter described, together with other property, for the sum of Three Hundred and Thirty-Three Thousand Three Hun-



dred and Thirty-three and 33/100 Dollars (\$333,333.33), in lawful money of the United States, which said sum of money said party of the first part has obligated himself to pay to the parties of the second part, in accordance with the provisions [857—250] of that certain contract in writing, dated the 16th day of August, 1919, between the parties of the second part herein as parties of the first part therein, and the party of the first part herein as party of the second part therein, in installments, at the times, and in the manner, and in accordance with the provisions of said contract in writing of August 16th, 1919.

NOW, THEREFORE, in consideration of the premises, and in consideration of the sum of One Dollar in hand paid to the party of the first part herein by the parties of the second part herein, the receipt whereof by the party of the first part herein from the parties of the second part herein is hereby acknowledged, and for other good and valuable considerations him hereunto moving, the party of the first part herein does by these presents grant, bargain, sell and convey unto the parties of the second part herein, and to their successors and assigns forever, all those certain pieces or parcels of land situate in the County of Pershing, formerly the County of Humboldt, of Nevada, more particularly described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of

the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain lot, piece or parcel of land situated [858—251] in the County of Pershing, (formerly the County of Humboldt,) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty-Seven (27), and Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence West, along the South line of said Section, to the South quarter corner thereof thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys together with all the rights,

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privileges and appurtenances thereunto belonging or in anywise appertaining, being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed, dated April 25, 1918, recorded in Book 53, page 76, of Deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying, situate and being in the County of Pershing (formerly County of Humboldt), State of Nevada, more particularly described as follows:

Beginning at the Southeast corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East Mt. Diablo Base and Meridian; thence North one Hundred feet, thence east five hundred (500) feet thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet, thence east one hundred (100) feet, to the place of beginning. Being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record reference is hereby expressly made; together with the mill, plant, improvements, tenements, and hereditaments thereon, and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed;

Also, that certain easement for the flow of tail-

ings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or over the northeast quarter of Section Thirty-five (35), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

Together with all mills, buildings, improvements and equipment erected upon or in any of the land hereinbefore described; and including all property thereon or therein which constitutes real property under the provisions of the laws of the State of Nevada in such case made and provided. [859—252]

This conveyance is intended as a mortgage, to secure the payment of Three Hundred Thirty-three Thousand, Three Hundred and Thirty-three and 33/100 (\$333,333.33) Dollars, in lawful money of the United States, as the purchase price of said and other property, upon the following installments and at the following times, to wit:

\$50,000.00 thereof on or before the 1st day of September, 1919,

\$50,000.00 thereof on or before the 1st day of October, 1919,



\$50,000.00 thereof on or before the 15th day of November, 1919,

\$50,000.00 thereof on or before the 27th day of December, 1919,

\$33,333.33 thereof on or before the 4th day of February, 1920,

\$25,000.00 thereof on or before the 4th day of May, 1920,

\$25,000.00 thereof on or before the 4th day of August, 1920,

\$25,000.00 thereof on or before the 4th day of November, 1920, and

\$25,000.00 thereof on or before the 4th day of February, 1921,

all of said payments of installments of said purchase price to be made in cash, or by certified check, or by Cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its Cashier, J. T. Goodin, who is Trustee for certain creditors of said parties of the second part herein, who shall, first, pay off the loan of \$10,000 procured by him to pay off labor claims, and shall thereafter pay out said installments so received to the respective creditors represented by him in accordance with his trust, but the payment thereof by said party of the first part herein to said Cashier and Trustee, or to his successors as such, shall be a complete performance by said party of the first part herein of the payment of each installment so paid, and said party of the first part herein shall not be ob-

ligated to ascertain whether said payments of said Cashier or Trustee have been properly distributed; according to the conditions of that certain written contract dated the 16th day of August, 1919, above mentioned, and these presents shall be void, if such payments be made [860—253] according to the tenor and effect thereof.

It is hereby understood and agreed, that the party of the first part shall, while this mortgage continues in force and effect and until the debt secured thereby shall be discharged, cause to be performed upon each of the unpatented mining claims in the property above described, the annual assessment work necessary to protect the same under the provisions of the Statutes of the United States and of the State of Nevada in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that the party of the first part herein shall have the right to conduct and operate said property, during the existence of this mortgage and until the debt secured thereby shall have been extinguished, to extract, ship, reduce and sell ore and concentrates therefrom, and shall apply the net proceeds of any concentrates derived from said operations, by him first, to the payment of the debt of the parties of the second part herein as set forth in said written contract of August 16th, 1919, obtaining credit therefor upon the installment of the purchase price in the manner therein set forth, and thereafter shall have the right to apply such net proceeds upon said installments of

the purchase price as will then remain, and shall have the right of necessary repair, renewal and replacement of machinery, tools, and equipment while so doing with machinery, tools and equipment of equal make and value, but all work and operations conducted by him upon or in said property or any part thereof shall be performed and done in a good and miner-like manner; and neither said parties of the second part, nor said property, nor any of them, shall be liable for the cost or expense of operating or conducting mining, milling, or reduction works [861—254] on or in said property, or for labor employed thereon or therein or material furnished thereon or therein, at the instance or request of said party of the first part herein or of his heirs, administrators, or assigns, but said party of the first part herein, his heirs, administrators and assigns shall be responsible for such costs and expenses;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein will cause to be recorded in the proper recording office and posted in the proper places upon said property any notices requested by the parties of the second part herein, that may be necessary to protect said property from liens under the provisions of the Statute in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein will pay, or cause to be paid, all taxes that may be levied upon said property by national, state,

county, or district authority, during the continuance of this mortgage, and until the debt secured thereby shall have been extinguished;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein shall cause the buildings upon said property to be insured against fire in reputable fire insurance companies authorized and doing business under the provisions of the laws of the United States and of the State of Nevada, and having the right to operate in said State of Nevada, in a sum of not less than \$82,950.00, and shall apportion said amount of insurance upon said property, as follows: mill buildings, not less than \$35,000; mill machinery, not less than \$40,000; superintendent's residence, not less than \$1,000; boarding-house and fittings, not less than \$800; twelve cottages [862—255] now upon said property, not less than \$1,800; compressor's building, not less than \$400; compressor machinery, not less than \$1,500; gallows-frame on S. P. ground, not less than \$300, hoist-building at S. P. shaft, not less than \$100; hoist engine at S. P. shaft, not less than \$500; gallows-frame, Carlson, not less than \$500; blacksmith's shop, not less than \$300; office and warehouse, not less than \$750.

It is understood and agreed, that, in case said party of the first part herein should fail or neglect to pay any of said taxes when due, or fail or neglect to cause to be performed any of said annual assessment work required by the provisions of the Statutes of the United States or the State of Nev-



ada, when necessary, the parties of the second part herein, or either of them, shall have the right, at their option, to pay said taxes, or fire insurance premiums upon the above insurance, or to cause said assessment work to be performed and to advance the money necessary therefor, and these presents shall constitute a security to them for the repayment of any such advances, as well as for the payments of the installments of the purchase price of said property hereinbefore set forth.

IT IS UNDERSTOOD AND AGREED, that if any installment of the purchase price hereinbefore set forth shall not be punctually paid when the same shall become due and payable, and for five days thereafter, as in said written contract of August 16th, 1919, and in this mortgage mentioned, then and in such case the whole of the balance of said purchase price then remaining unpaid shall be taken to be wholly due and payable, at the option of said parties of the second part herein, or of either of them, and proceedings may forthwith be had by said parties of the second part, their successors and assigns, [863—256] for the recovery of the same, either by suit on said contract of August 16th, 1919, or on this mortgage, anything in said contract or in this indenture contained to the contrary thereof notwithstanding. And in any suit or other proceedings that may be had for the recovery of said balance of said purchase price, on either said contract or this mortgage, it shall and may be lawful for said parties of the second part herein, their successors or assigns, to include in

the judgment that may be recovered, such reasonable counsel fees and charges of attorneys and counsel employed in such foreclosure suit as shall be fixed by the Court having jurisdiction of such foreclosure suit, as well as all payments that the parties of the second part herein, or either of them, or their successors or assigns, may make for their security, or for the security of either of them, on account of taxes or moneys expended for the payment of fire insurance premiums, or for annual assessment work upon said premises, as hereinbefore mentioned.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year herein first above written.

W. J. LORING.

State of Nevada,  
County of Pershing,—ss.

On this 23d day of August, A. D. one thousand nine hundred and nineteen personally appeared before me, Booth B. Goodman, a Notary Public in and for Humboldt County, W. J. LORING known to me to be the person described in and who executed the foregoing instrument who acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in Lovelock, County of [864—257] Pershing, the

day and year in this certificate first above written.

BOOTH B. GOODMAN,

Notary Public in and for the County of Humboldt,  
State of Nevada, acting in Pershing County.

[Endorsed]: Recorded at request of R. Nenzel. Aug. 23, 1919, at 54 min. past 4 o'clock, P. M. Book 1, page 57, 58, 59, 60, 61, of Real Estate Mortgages, Records of Pershing County, Nev. Chattel Mortgages, pages 26, 27, 28, 29, 30. C. L. Young, County Recorder. By \_\_\_\_\_, Deputy. File No. 342. Mortgage to Secure Purchase Price. W. J. Loring to Nevada Tungsten Mines Co., and Tungsten Products Company. Dated August 23d, 1919. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. H. T. M. Co. et al. Defts. Ex. "A-25." Filed Sept. 22d, 1920. T. J. Edwards, Clerk. John F. Davis, Attorney at Law, Humboldt Savings. Telephone Douglas 3865. (Note: Cover torn.)

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### **Defendants' Exhibit "A-26."**

#### **ARTICLE I.**

##### **NAME, LOCATION AND OFFICE.**

The name of this corporation shall be the NEVADA HUMBOLDT TUNGSTEN MINES CO.

The company shall have its principal office in the town of Lovelock, Humboldt County, Nevada, where its corporate business may be transacted and its stockholders' and directors' meetings held.

## ARTICLE II.

## SEAL.

The seal of the company shall consist of two concentric circles between which are inscribed the words "NEVADA HUMBOLDT TUNGSTEN MINES COMPANY" and "INCORPORATED Feb'y. 1917," and inside of these the word "Seal." [865—258]

## ARTICLE III.

## STOCKHOLDERS' MEETINGS.

Stockholders may vote at all meetings either in person or by proxy appointed by instrument in writing subscribed by the stockholder or his duly authorized attorney. Proxies, to be voted, must be filed with the secretary at least five days before the date of any meeting at which same is to be used. Each stockholder is entitled to one vote for each share of stock standing in his name on the books of the company at the time of the meeting. Shares hypothecated to the company shall not be represented.

Stockholders holding a majority in amount of the stock issued and outstanding shall be necessary and sufficient to constitute a quorum for the transaction of business. If less than a quorum be present, the meeting may be adjourned from time to time by a majority in interest of the stockholders present, for a period not exceeding one month, without any notice other than the announcement of the meeting, until a quorum be present. Any meeting at which a quorum is present may also be adjourned in like manner, by a



majority in interest of the stockholders present, for such a time, or upon such call, as is determined by vote. At any such adjourned meeting, at which a quorum shall be present, any business may be transacted which might have been attended to at the meeting as originally called.

The annual meeting of the stockholders after the year 1917, shall be held on the "second Monday in May," in each year, at 10 o'clock a. m. and the secretary shall give notice thereof without being specially requested so to do. [866—259] At such meeting the company shall elect directors and transact any other business properly coming before the meeting.

Special meetings of the stockholders shall be called by the secretary at the written request of the president or a majority of the directors.

All stockholders' meetings, whether annual or special, shall be called by the secretary by mailing a written or printed notice thereof, stating the day, hour and place of meeting; and in case of special meetings, the general nature of the business to be transacted, to each stockholder of record at his last known postoffice address, postage prepaid, at least five days, exclusive of the day of mailing, before the date of the meeting; or such meeting may be called by the secretary by publishing notice thereof stating the day, hour and place of meeting; and in case of special meetings, the general nature of the business to be transacted, for three successive times; the last publication to be at least two days before the date of the meeting,

and notice given in either of the foregoing modes shall be valid. Failure on the part of a stockholder to receive notice of the meeting shall not invalidate the proceedings at such meeting.

If all of the stockholders, in writing, waive notice of a special meeting, no notice of such meeting shall be required. All meetings of stockholders, at which all are present, either in person or by proxy, are legal and valid for all purposes, whether or not previous notice thereof has been given, and at such meeting any corporate action may be taken. [867—260]

#### ARTICLE IV.

##### DIRECTORS' MEETINGS.

The newly elected board of directors may hold its first meeting for the purpose of organization and transaction of business, without notice, at such time and place as shall be fixed at the annual meeting by vote of the stockholders; or the time and place of the first meeting may be fixed by consent in writing of the directors.

At such meeting the board shall elect a president, one or more vice-presidents, a secretary and a treasurer. The president and vice-president, or vice-presidents, shall be chosen from among the directors. The secretary may be elected from the directors or stockholders but he need be neither. The secretary may also act as treasurer. All of the directors shall be stockholders and if a director shall dispose of all of his stock his office shall *ipso facto* become vacant, and the statement of the secretary that the said director has no stock,

of record, in his name shall be sufficient evidence of such fact for the board to declare the office vacant and to proceed to the election of his successor.

A majority of the whole board shall be necessary to constitute a quorum but a less number may adjourn a meeting from time to time until a quorum is present. Meetings of the board may be called by the president on three days' notice to each director, either personally or by telegram, and may be held at such place, either within or without the state as shall be stated in the notice.

#### ARTICLE V.

##### OFFICERS OF THE COMPANY.

The officers of the company shall be a president, [868—261] one or more vice-presidents, a secretary and a treasurer, who shall be elected by the board of directors at their annual meeting and hold office for one year or until their successors are elected and qualified. In case the election of officers shall not be had on the day of the annual meeting, such officers may be chosen at an adjourned meeting or any subsequent meeting called for that purpose.

#### ARTICLE VI.

##### PRESIDENT.

The president shall be elected annually by the board of directors and shall be subject to the control and direction of the company. He shall preside at all meetings of the company, both stockholders' and directors'; shall have general superintendence and direction of all the other officers of the com-

pany and shall see that all orders and resolutions of the board are carried into effect. He shall execute all deeds, mortgages, bonds and other documents authorized by the board requiring a seal, under the seal of the company. He shall counter-sign all checks. He shall whenever requested, report to the board on all matters within his knowledge, which the interests of the company may require; perform such other duties as may be required of him by law, these by-laws, and by the board, and in general shall have all the powers and duties incident to the office of the president of a corporation.

#### ARTICLE VII.

##### VICE-PRESIDENTS.

The vice-president, or vice-presidents, if the board of directors deem it advisable to choose more than one, shall be elected annually by the board of directors and shall [869—262] be vested with the powers and shall perform the duties of the president in his absence or inability to act.

#### ARTICLE VIII.

##### SECRETARY.

The secretary shall be elected annually by the board of directors. He shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors and all other notices required by law, these by-laws or the board. He shall keep a true record of all meetings of the board and the stockholders and perform such other duties as may be prescribed by the board of the president, under whose supervision he shall be. He



shall have the custody of the seal of the company and when authorized shall affix it to any instrument requiring it, and attest the same and the signature of the company. He may be sworn to the faithful discharge of his duties. He shall sign all checks or other instruments for the payment of money. One or more assistant secretaries may also be appointed who shall be authorized to sign stock certificates.

## ARTICLE IX.

### TREASURER.

The treasurer shall keep the full and accurate accounts of the receipts and disbursements in books belonging to the company, and shall deposit all moneys and other valuable effects in its name and to its credit in such depositories as the board of directors may designate. He shall render to the president and directors at the regular meetings of the board or whenever they may require it, an account of all his transactions and of the financial condition of the [870—263] company. If required, he shall give the company a bond in such sum as the board may designate, and with satisfactory sureties, for the faithful discharge of his duties, and for the restoration to the company, in case of his death, resignation or removal from office, of all of its books, papers, vouchers, money or property of whatever kind in his possession.

## ARTICLE X.

### BOARD OF DIRECTORS.

The immediate government and direction of the affairs of the company shall be vested in the board

of directors. They must be and remain stockholders. In addition to the powers and authorities expressly conferred upon them, all of the powers of the company, except as otherwise provided by law or these by-laws, are vested in them.

Without prejudice to the general powers conferred, the board shall have the following powers, to wit:

1st. To make and change rules and regulations for the management of the company's business and affairs.

2d. To lease, purchase or otherwise acquire, sell, assign or otherwise convey, in any lawful manner for and in the name of the company, any of its real estate or other property, rights, privileges, whatsoever, deemed necessary or convenient and on such terms and conditions as they think fit, and at their discretion to pay, or accept therefor, either wholly or in part, money, stocks, bonds, debentures or other securities, either of this company or of any other.

3d. To create, issue and make, mortgages, bonds, deeds of trust, trust agreements, and (or) negotiable instruments and securities, secured by mortgage or otherwise, not to [871—264] exceed ten per centum of the capital of the company, and to do every other act or thing necessary to effectuate the same.

4th. To appoint, at their discretion, remove or suspend, such agents as they think fit, and to determine their salaries.

5th. Any action of a majority of the board, although not at or as a regularly called meeting, and the record thereof, if assented to in writing by all the other members of the board, shall be valid and effective in all respects as if passed by the board in regular meeting.

#### ARTICLE XI.

##### RESIGNATION.

Any director or other officer may resign at any time. Such resignation to be in writing and to take effect at the time therein specified. No acceptance of such resignation shall be necessary to make it effective.

#### ARTICLE XII.

##### FILLING OF VACANCIES.

If the office of one or more directors or other officers of the company become vacant by reason of death, resignation, disqualification, or otherwise, the remaining director, or directors, although less than a quorum, may choose or appoint a successor who shall hold office for the unexpired term.

#### ARTICLE XIII.

##### DELEGATION OF DUTIES.

In case of the absence of any officer of the company, the board may delegate his powers and duties to any other officer or to a director for the time being, upon the consent of a majority of the board.  
[872—265]

#### ARTICLE XIV.

##### THE ISSUE AND TRANSFER OF STOCK.

The president shall cause to be issued to each stockholder one or more certificates representing

the number of shares owned by him in the company, signed by the president, or vice-president, and attested by the secretary and bearing the corporate seal. The stock of the company shall be transferable upon its books only by the holders of the shares, in person, or by their legal representatives, and only upon the surrender of the certificates to the company. A record shall be made and kept of all issues and transfers. The company shall treat the registered holder of any share as the absolute owner thereof and shall not be bound to recognize any claim to, or interest in, such shares on the part of any other person, whether he shall have notice thereof or not.

#### ARTICLE XV.

##### LOSS OF CERTIFICATES.

Any persons claiming a certificate of stock to have been lost, destroyed or stolen, shall make an affidavit to that effect and give the company such indemnity as the board may require before a new certificate of the same tenor as the one alleged to have been lost, destroyed or stolen, shall be issued.

#### ARTICLE XVI.

##### DIVIDENDS.

The board of directors shall declare dividends out of the surplus profits whenever they deem it expedient. [873—266]

#### ARTICLE XVII.

##### NOTICE.

Whenever a notice is required by the statutes or by the by-laws to be given to stockholders, directors, or officers, personal notice is not meant, un-



less expressly so stated, and any notice so required, other than by publication, shall be deemed sufficient if given by depositing the same in a post office box, post paid, to such person, and such notice shall be deemed to have been given at the time the same is mailed.

#### ARTICLE XVIII.

##### WAIVER OF NOTICE.

Any stockholder, officer or director may waive any notice required to be given under these by-laws.

#### ARTICLE XIX.

##### AMENDMENTS.

The board of directors shall have power, concurrently with the stockholders, to alter, amend or change these by-laws.

We, the undersigned, stockholders (or Incorporators) of the "Nevada Humboldt Tungsten Mines Company," owning two-thirds of the subscribed capital stock of said corporation, having read and considered the foregoing code of by-laws for said corporation, hereby adopt same.

H. J. MURRISH,  
C. H. JONES and  
V. A. TWIGG,  
1,000,000 shares.

[Endorsed]: Book of By-laws. Nevada Humboldt Tungsten Mines Co. Copy. No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Humb. T. M. Co. et al. Defts. Ex. "A-26." Filed Sept. 22, 1920. T. J. Edwards, Clerk. [874—267]

**Defendants' Exhibit "A-27."**

NEVADA HUMBOLDT TUNGSTEN MINES CO.

Mines Located Near Mill City, Humboldt County,  
Nevada.

Office, Lovelock, Nevada.

Lovelock, Nevada, July 21st, 1919.

Mr. W. L. Loring,  
Crocker Building,  
San Francisco,  
California.

Dear Sir:

We are in receipt of your letter of even date asking for an option on our stock and that of our associates in the Nevada Humboldt Tungsten Mines Company, the Tungsten Products, as well as our interest in the Mill City Development Company. The terms of said option are set forth in copy of your letter hereto attached.

The price, terms and conditions, as outlined in your letter, are satisfactory to us and we hereby grant you this option.

Yours very truly,  
L. A. FRIEDMAN,  
C. W. POOLE,  
C. H. JONES,  
G. K. HINCH,  
R. NENZEL,  
LENA J. FRIEDMAN.

LAF-O.

Lovelock, Nevada, July 21st, 1919.

L. A. Friedman, President,

Nevada Humboldt Tungsten Mines Company,  
and Tungsten Products Company,  
Lovelock, Nevada.

Dear Sir:

I beg to confirm my conversation with you this morning with reference to an option that I wish to secure from you and your associates upon the property of the Nevada Humboldt [875—268] Tungsten Mines Company, Tungsten Products Company and also the interest of the Mill City Development Company, which I understand to be as follows:

I understand that the total indebtedness of the company, at the present time, is about \$200,000.00, and it is my understanding that the first payments made are to be for the purpose of liquidating the indebtedness referred to, and should it be found that a larger sum than \$200,000.00 will be necessary to liquidate the indebtedness of the company, that the same shall be taken from the payments that will follow after \$200,000.00 has been received by yourselves. These payments are to be made on the following dates, for the following amounts, namely:

4th of August, 1919	.....	\$50,000.00
4th of Sept.,	“ .....	\$50,000.00
4th of Nov.,	“ .....	\$50,000.00
4th of Dec.,	“ .....	\$50,000.00
4th of January, 1920	.....	\$33,333.33
4th of March,	“ .....	\$25,000.00

4th of May,	“	.....	\$25,000.00
4th of August,	“	.....	\$25,000.00
4th of Nov.,	“	.....	\$25,000.00

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Making a total of ..... \$333,333.33

It is understood by me that any money that may be received from the government, as relief under the War Minerals Relief Bill, shall be for the benefit of the purchases of your company and its rights, and that all concentrates on hand, or in transit, and all moneys owing to the company at the time of making the first payment shall belong to the purchasers. Also, whatever amount is secured from the government as Relief under the War Minerals Relief Bill it is understood shall be applied immediately to the liquidating of indebtedness; the payment of indebtedness next coming due in accordance with the terms of this agreement.

It is also understood that no part of the agreement is [876—269] to be considered in option except that part from the date hereof until the 4th of August, 1919, during which time I am to make such preliminary arrangements as I may see fit for further carrying into effect the terms of this agreement, or abandoning the same. I might state here, that I may find that two weeks will be inadequate for me to make the necessary financial arrangements for carrying this agreement into effect, and should I find it necessary to ask for an extended few days, I dare say that that time will be granted me, providing that I show good faith in



my actions from this occasion to the end of the two weeks' period, referred to.

It is understood that should at the end of the two weeks' period referred to that this agreement is to be put into effect, that it will be confirmed by properly drawn up legal document.

With kindest regards, I remain,

Faithfully yours,

W. J. L.

WJL-O.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Humb. T. M. Co, et al. Re Loring Option. Defts. Ex. No. "A-27." Filed Sept. 22d, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit No. "A-28."**

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY.

Mines Located Near Mill City, Humboldt County,  
Nevada.

Office, Lovelock, Nevada.

Lovelock, Nevada, August 9th, 1919.

Mr. W. J. Loring,

614 Crocker Bldg.,

San Francisco, Cal. [877—270]

My dear sir:

We are in receipt of your letter of even date modifying the terms of the option given you on the 21st of July, 1919, a copy of your letter being hereto attached.

This is to certify that we agree to the terms and conditions as outlined in your letter.

Yours very truly,  
L. A. FRIEDMAN.  
C. W. POOLE.  
G. K. HINCH.  
R. NENZEL.  
C. H. JONES.  
H. J. MURRISH.  
LENA J. FRIEDMAN.

LAF-O.

Lovelock, Nevada, August, 9th, 1919.

L. A. Friedman, President.

Nevada Humboldt Tungsten Mines Co.

Tungsten Products Company,

Lovelock, Nevada.

My dear sir:

With reference to the letter received from you dated the 9th of August, 1919, signed by L. A. Friedman, C. W. Poole, R. Nenzel, G. K. Hinch, C. H. Jones, Lena J. Friedman and H. J. Murrish, the terms of which have been modified since the signing of the letter referred to, of which my understanding is as follows:

Instead of \$50,000 being payable as provided for in the letter to yourselves dated the 21st of July, 1919, which has been extended as per your letter of the 9th of August, 1919, from the 4th of August, 1919, until the 14th of August, 1919, the said payment is to be made on the 1st of September, 1919, but at noon on the 14th of August, 1919, I am to give you a definite answer as to whether the pur-

chase of the properties under option to me shall be made or not. I am to furnish you with such a document [878—271] as may be legal under the terms of this agreement and if I decide to exercise the option and give you legal notice on the 14th of August, 1919, before noon, to that effect, you are to depend upon a payment of \$50,000.00 upon the purchase price of your properties being made on the 1st of September, 1919, and \$50,000.00 payable on the 1st of October, 1919, and \$100,000.00 payable on or before the 1st of January, 1920. The balance due, namely \$133,333.33, shall be in accordance with my letter to you dated Lovelock, Nevada, July 21st, 1919, and all other conditions as stated therein shall be strictly adhered to.

As consideration for the modified terms referred to above, it has been agreed between the parties to the agreement that you are to have the right to negotiate the sale of such concentrate as may be available on your property, outside of the thirty tons which I am now holding in accordance with an arrangement made with you. The proceeds of the sale of any concentrate that you may make shall be on account of the company, and should I decide to exercise my option on your property, then any transactions made by you with regard to the sale of concentrate shall be taken over by me, or my assigns.

Yours very truly,  
W. J. L.

WJL-O.

[Endorsed]: No. B-7. U. S. Dist. Court Dist. Nevada. Taylor vs. Nev. Humb. T. M. Co. et al. Modification of the Loring Option. Defts. Ex. No. "A-28." Filed Sept. 22, 1920. T. J. Edwards, Clerk. [879—272]

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**Defendants' Exhibit "A-29."**

**WESTERN UNION TELEGRAM.**

Lovelock, Nevada, Aug. 19th, 1919.

W. J. Loring,

614 Crocker Bldg.,

San Francisco, Calif.

Have personally inspected all papers served in Friedman cases stop One case is against the individuals on alleged misrepresentations and does not in any way effect us stop The second is against the tungsten mine and mill corporations for nine thousand dollars stop Writ of attachment issued against company properties in secone suit but Frieman and associates are furnishing bond which will prevent service of the writ stop The suits in their present status will not in any way interfere with our deal stop Will keep you advised of any new developments stop Am mailing copies of papers to Judge Davis

**BOOTH B. GOODMAN.**

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Humb. T. M. Co. et al. Goodman to Loring, Aug. 19/19. Defts. Ex. "A-29." Filed Sept. 22, 1920. T. J. Edwards, Clerk.



**Defendants' Exhibit No. "A-30."**

**WESTERN UNION TELEGRAM.**

Received at 722 Market Street, San Francisco,  
Calif.

A198SF ZK 130 BLUE.

Lovelock Nev 12P Aug 19 1919 [880—273]

Judge John F. Davis

259

1404 Humboldt Bank Bldg

San Francisco Calif

Replying your wire Taylor suits pray for straight money judgement only Stop Suit against companies demands nine thousand as balance for money loaned to the corporations and which was secured by hundred tons of concentrates Stop Plaintiff alleges that security was insufficient and balance is due Stop Other suit is against Friedman and associates as individuals based on allegation that upon representations by defendants plaintiff rendered services and expended money in an effort to raise money for the corporations in consideration for which he has to receive sixty two percent of capital stock Stop That said representations were false in regard to developed tonnage Stop Alleges damages caused by reason of said alleged misrepresentations which made it impossible to carry out contract after discovery thereof see wires to Loring.

**BOOTH B. GOODMAN.**

151P.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Goodman to Davis, Aug. 19/19. Defts. Ex. No. "A-30." Filed Sept. 22d, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "A-31."**

KNOW ALL MEN BY THESE PRESENTS: That the Rochester Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, for value received in lawful money of the United States, the receipt whereof is hereby acknowledged, [881—274] has sold, assigned, transferred, and set over, and by these presents does hereby sell, assign, transfer, and set over unto W. J. Loring of the city and county of San Francisco, State of California, a certain debt due said ROCHESTER MINES COMPANY from Nevada Humboldt Tungsten Mines Company, a Nevada corporation, amounting to the sum of Thirteen Thousand One Hundred Fifty-eight and 52/100 Dollars, giving unto the said W. J. Loring full power to sue for, collect and discharge or sell and assign the same.

IN WITNESS WHEREOF the said ROCHESTER MINES COMPANY has caused its name to be hereto subscribed by its Secretary and Treasurer this 16th day of August, A. D. 1919, and caused its corporate seal to be affixed.

ROCHESTER MINES COMPANY,

[Seal]

By R. NENZEL,  
Secretary and Treasurer.

[Endorsed]: Assignment—Rochester Mines Company to W. J. Loring. Dated Aug. 16, 1919. Booth B. Goodman, Attorney at Law, Lovelock, Nevada. No. B-7. U. S. Dist. Court, Dist. of Nevada. Defts Ex. No. "A-31." Filed Sept. 22d, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "A-32."**

KNOW ALL MEN BY THESE PRESENTS: That the ROCHESTER COMBINED MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, for value received in lawful money of the United States, the receipt whereof is hereby acknowledged, has sold, assigned, transferred and set over, [882—275] and by these presents does hereby sell, assign, transfer, and set over unto W. J. Loring of the City and county of San Francisco, State of California, a certain debt due said Rochester Combined Mines Company from Nevada Humboldt Tungsten Mines Company, a Nevada corporation, amounting to the sum of Four Thousand Two Hundred Eleven and 63/100 Dollars giving unto the said W. J. Loring full power to sue for, collect and discharge or sell and assign the same.

IN WITNESS WHEREOF the said Rochester Combined Mines Company has caused its name to be hereto subscribed by its Secretary and Treasurer

this the 16th day of August, A. D. 1919, and caused its corporate seal to be affixed.

ROCHESTER COMBINED MINES COMPANY.

[Seal]

By R. NENZEL,  
Secretary and Treasurer.

[Endorsed]: Assignment — Rochester Combined Mines Co. to W. J. Loring. Dated Aug. 16, 1919. Booth B. Goodman, Attorney at Law, Lovelock, Nevada. No. B-7. U. S. Dist. Court, Dist. of Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Defts. Ex. No. "A-32." Filed Sept. 22d, 1920. T. J. Edwards, Clerk.

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**Defendants' Exhibit "A-33."**

KNOW ALL MEN BY THESE PRESENTS, That Nevada Humboldt Tungsten Mines Company a corporation organized and existing under and by virtue of the laws of the State of Nevada, for and in consideration of the sum of Ten (\$10.00) Dollars, lawful money of the United States, and of a valuable consideration to it in hand paid by W. J. Loring, of the City and County of San Francisco, state of California, the receipt whereof is hereby acknowledged, has sold, assigned, [883 — 276] transferred, set over, conveyed and by these presents does hereby sell, assign, transfer, set over and convey unto said W. J. Loring and his heirs, executors, administrators and assigns all of the right, title and interest of the Nevada Humboldt Tungsten Mines



Company in and to a certain power contract dated the 28th day of May, 1918; and made by and between Nevada Valleys Power Company, a corporation on the one part and said Nevada Humboldt Tungsten Mines Company on the other part.

TO HAVE AND TO HOLD the said contract and all and singular, the benefits, rights and privileges arising therefrom unto the said W. J. Loring, his heirs, executors, administrators and assigns to their own proper use.

IN WITNESS WHEREOF the said Nevada Humboldt Tungsten Mines Company has by resolutions of its Board of Directors and stockholders, caused its corporate name to be hereto subscribed by its President and Secretary, and its corporate seal to be affixed this 3d day of August, 1919.

NEVADA HUMBOLDT TUNGSTEN  
MINES CO.

By L. A. FRIEDMAN,  
President.

Attest: R. NENZEL,  
Secretary.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. Nevada. Taylor vs. Nev. Hum. T. M. Co. et al. Assignment to Loring. Aug. 23/19. Defts. Ex. "A-33." Filed Sept. 22d, 1920. T. J. Edwards, Clerk. [884—277]

**Defendants' Exhibit "A-34."****THE FIRST NATIONAL BANK OF  
LOVELOCK.**

Capital and Surplus \$85,000.00.

Lovelock, Nevada.

September 25th, 1920.

Cooke, Wheeler &amp; Davis, Attys.,

Carson City, Nevada.

Gentlemen:

I promised to send some figures as to the indebtedness of the different Tungsten Companies, which I hereby supply as of date August 15th, 1919.

## Nevada Humboldt Tungsten

Mines Co. ....	\$125,935.95
Tungsten Products Company	59,296.71
1/2 Mill City Devp. Co.....	8,919.15

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 \$194,151.81

The above indebtedness does not include the account of \$9,179.44 of David Taylor, which he claimed the Companies owed him.

Very truly yours,

J. T. GOODIN,

Trustee.

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of Nevada. David Taylor vs. Nev. Humb. Tungsten M. Co. et al. Goodin's Statement of Indebtedness Deft. Corporations. Defts. Ex. "A-34." Filed Oct. 1st, 1920. T. J. Edwards, Clerk.

**Defendants' Exhibit "A-35."**

(Note: Defendants' Exhibit "A-35" consists of 20 sheets of quotations from the New York Stock Exchange, which are too voluminous to be set out here.) [885—278]

[Endorsed]: No. B-7. U. S. Dist. Court, Dist. of Nevada. Taylor vs. Nev. Humb. Tungsten M. Co. et al. 20 sheets N. Y. Stock Exchange. Defts. Exhibit No. "A-35." Filed October 2d, 1920. T. J. Edwards, Clerk. [886—279]

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In the District Court of the United States, in and  
for the District of Nevada.

No. 7-B.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a corporation, et al.,

Defendants.

**Certificate of the District Judge Settling State-  
ment of the Evidence.**

I hereby certify that the foregoing statement of the evidence, as amended and corrected, is hereby settled and allowed, and I further certify that said statement contains all of the evidence save and except Exhibits 15, 20 and "Y," copies of which

it is impracticable to incorporate in the record, and the originals are hereby ordered, may be sent up.

I further certify that at the request of the parties the exact language of the witnesses is stated, permission being given by the undersigned District Judge.

Dated: This 9th day of June, 1922.

E. S. FARRINGTON,

District Judge of the United States District Court.

[887]

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**Names and Addresses of Attorneys of Record.**

Messrs. HOYT, NORCROSS, THATCHER,  
WOODBURN & HENLEY, Reno, Nevada,  
For the Plaintiff in Error.

Messrs. WHEELER & WHEELER, Nevada Bank  
Building, San Francisco, Calif., Hon. JOHN  
F. DAVIS, Humboldt Bank Building, San  
Francisco, Calif., and Messrs. FRENCH,  
COOKE & STODDARD, Reno, Nevada,  
For the Defendants in Error. [890]



In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W. POOLE,  
R. NENZEL, H. J. MURRISH, L. A. FRIED-  
MAN, C. H. JONES, G. K. HINCH, J. T.  
GOODIN, V. A. TWIGG, J. C. HUNTING-  
TON and LENA J. FRIEDMAN, Individually,  
Defendants.

### **Complaint in Equity.**

To the Honorable E. S. FARRINGTON, District  
Judge for the District of Nevada:

Comes now David Taylor, now and at all times  
herein stated, a resident of the City of Denver,  
State of Colorado, and brings this, his bill of com-  
plaint, against the Nevada Humboldt Tungsten  
Mines Company, a corporation, now and at all times  
hereinafter stated, a citizen and resident of the  
State of Nevada, and against the Tungsten Products  
Company, a corporation, now and at all times  
herein stated, a citizen and resident of the  
State of Nevada, and against W. J. Loring, in-  
Company, a corporation, now and at all times

herein stated, a citizen and resident of the State of Nevada, and against W. J. Loring, individually, now and at all times herein stated, a resident and citizen of the State of California, [891] and against C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, individually, now, and at all times stated herein, residents and citizens of the State of Nevada, and thereupon, this plaintiff shows:

### I.

That plaintiff is, and at all times herein stated, was a citizen and a resident of the State of Colorado, residing in the city and county of Denver of said state; that the defendant, Nevada Humboldt Tungsten Mines Company is now, and at all times mentioned in this complaint was, a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, with its principal office and place of business at the City of Lovelock in the county of Pershing and a citizen and resident of said State of Nevada; that the defendants Tungsten Products Company and Mill City Development Company, are now, and at all times mentioned in this complaint were, corporations duly and regularly organized and existing under and by virtue of the laws of the State of Nevada with their principal place of business at the City of Lovelock, in the County of Pershing, and said corporations were, and are, citizens and residents of the State

of Nevada; that the defendant W. J. Loring is, and at all times mentioned in this complaint was, a citizen of the State of California, residing in the city and county of San Francisco of said state; that the defendants C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, Lena J. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin and V. A. Twigg, are now, and at all times mentioned in this complaint, were citizens and residents of the State of Nevada and of Lovelock, Pershing County in said State; that the defendant J. C. Huntington [892] is a citizen and resident of the State of Nevada, but, as plaintiff is informed and believes, is a citizen and resident of Tonopah, in the County of Nye of said state.

## II.

That this is a controversy between citizens and residents of different states and the amount in controversy herein, exclusive of interests and costs, exceeds the sum of \$3000.00. That this is not a collusive one to confer upon a court of the United States Jurisdiction of a case which it would not otherwise have cognizance of.

## III.

That on or about the 16th day of January, 1919, the plaintiff entered into a contract with the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, whereby the plaintiff agreed to make certain advances of money to the amount of \$100,000.00, in consideration of which, the defendants, Nevada Humboldt Tungsten

Mines Company and Tungsten Products Company agreed to deliver at certain dates in said contract specified, in carload lots, as security for such advances and for the purpose of allowing the plaintiff to sell the same, a minimum of 170 tons of scheelite concentrates of certain guaranteed quantities, all of which more fully appears in said contract, a full, true and correct copy of said contract being attached hereto, make a part hereof and marked Exhibit "A."

#### IV.

That on or about the 16th day of January, 1919, the defendants, Poole, Nenzel, Murrish, L. A. Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman, executed, made and entered into a contract with the plaintiff for the sale of [893] all of their respective interests in the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, said interest of the respective defendants being represented by certain shares of stock in said companies, the said Nevada Humboldt Tungsten Mines Company being then and thereafter the owner of certain mines, mining claims and mining rights in certain real estate, all situate near Mill City in what is now the county of Pershing, State of Nevada; that the Tungsten Products Company was then and thereafter a subsidiary of said Nevada Humboldt Tungsten Mines Company, owned and operated as a mill for the treatment and concentration of certain scheelite ores



produced by the Nevada Humboldt Tungsten Mines Company at its property, mine and mining rights and mining claims aforesaid, and that the Mill City Development Company was a corporation owning certain real estate, also a pipe line and water rights and about 50 per cent of the capital stock of said company was then and there owned by the Nevada Humboldt Tungsten Mines Company or the Tungsten Products Company, hereinbefore mentioned. That a copy of said contract for the sale of said respective interests of the defendants is attached to this complaint, made a part hereof and marked Exhibit "B."

V.

That shortly after the making and execution of the said contract of January 16, Exhibit "B," one Howland Bancroft, a mining engineer, at the special instance and request of the plaintiff, made an examination of the mines, mining property and mining rights of the Nevada Humboldt Tungsten Mines Company, which said report was communicated to the plaintiff that said report showed the amount of development which then existed upon said mining property of the Nevada Humboldt Tungsten Mines [894] Company and showed that about 9,000 tons of scheelite ore, of an average of 1.75 per cent tungstic acid had been developed, placed in sight, blocked out and made ready for mining in said mining property of said Nevada Humboldt Tungsten Mines Company; that at all of the times mentioned in this complaint the defendants, Murrish, Nenzel, L. A.

Friedman and C. H. Jones were directors of the Nevada Humboldt Tungsten Mines Company and of the Tungsten Products Company, and the defendant Poole had then and at all times thereafter, and until the execution of the conveyances hereinafter set forth and described by the defendant corporations to the defendant W. J. Loring, general charge of all mining and milling operations of said Nevada Humboldt Tungsten Mines Company and its subsidiary, the Tungsten Products Company; that the fact and truth concerning said mines and mining claims of the Nevada Tungsten Mines Company, and the development work which had been performed and the new development work in progress on and within said mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company and the amount of ore developed, placed in sight, blocked out and made ready for mining and extraction and reduction in said mining property of the Nevada Humboldt Tungsten Mines Company were at all times mentioned in this complaint, peculiarly within the knowledge and information of the said last named defendants, and particularly of the defendants, Poole, Nenzel, Murrish and Friedman; that on or about the month of March, 1919, plaintiff informed the defendants, Friedman, Poole, Lena J. Friedman, Huntington, Nenzel, Jones, Hinch, Goodin, Twigg and Murrish that it was probable that the plaintiff would not be able to exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16, Exhibit "B." That

thereupon the defendants Poole, [895] Murrish, Nenzel and Friedman, acting for themselves and for the defendants, Lena J. Friedman, Jones, Hinch, Goodin, Twigg and Huntington, with the intent to deceive plaintiff, and for the purpose of inducing plaintiff to execute and undertake the supplemental contract, Exhibit "C," hereafter referred to, falsely and fraudulently, by means of telegrams and letters, informed the plaintiff that further and new development work had been carried on within said mines, mining claims and mining rights of Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and made ready for mining, large quantities of scheelite ore of commercial value and capable of being concentrated and the concentrates so returned being of great value. That thereafter and on or about the 2d day of April, 1919, the defendants, Poole, Murrish and Nenzel, came to Denver, Colorado, for the purpose of inducing the plaintiff to make a supplemental contract for the disposition of their respective interests or a part thereof, and the plaintiff then and there believing and relying on the said representations of the defendants, Poole, Murrish and Nenzel who then and there represented themselves and were acting as the agents and attorneys in fact for the other defendants, last above named, entered into a supplemental contract whereby plaintiff undertook to raise sufficient moneys to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Pro-

ducts Company and their respective share in the Mill City Development Company, for which said services the plaintiff was to receive 62 per cent of the issued capital stock of the Nevada Humboldt Tungsten Mines Company and 62 per cent of the issued capital stock of the Tungsten Products Company and 62 per cent of one-half of the issued capital stock of the Mill City Development Company, a full, true and correct copy of said contract being attached to this [896] complaint, made a part hereof and marked Exhibit "C." That said contract was made and executed at the city and county of Denver, in the State of Colorado; that the defendants, Poole, Murrish and Nenzel, acting for themselves and as the agents of and the attorneys in fact for the defendants, L. A. Friedman, Lena J. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and J. C. Huntington, for the purpose of inducing the plaintiff to enter in and upon said supplemental contract, Exhibit "C," of date of April 2, 1919, then and there, falsely and fraudulently, and with the intent to deceive the plaintiff, represented to the plaintiff that since the examination of the mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company and the report thereof made by Howland Bancroft, mining engineer aforesaid, to this plaintiff, great and additional ore bodies of equal grade and quality had been developed; that a large amount of new development work had been done and performed upon said mines and that there was



then, on said 2d day of April, blocked out, in sight, and ready for mining and reduction into concentrates, over 60,000 tons of scheelite ore which would carry an average of 1.75 per cent tungstic acid; that each and all of the representations aforesaid were false and untrue and were known by said defendants at the time they were made to be false and untrue and were made for the purpose of deceiving the plaintiff and for the purpose of causing him to undertake and carry out the terms of said supplemental contract of April 2d, Exhibit "C," attached hereto; that in truth and in fact, at said time, there was opened up, blocked out and in sight in said mine not to exceed 19,000 tons of scheelite ore of an average value not to exceed 1.75 per cent tungstic acid. [897]

## VI.

That plaintiff, then and at all times thereafter, relying upon and believing said false and fraudulent representations of said defendants so made as aforesaid, executed said contract, Exhibit "C" of said date of April 2, 1920, and immediately thereafter gave practically his entire time and attention to carrying out the terms of said contract, by which he was to raise for the benefit of such defendant corporations, sufficient moneys for the payment of their debts and outstanding obligations, and plaintiff, for the purpose of consummating the same and carrying out the terms thereof, laid out and expended for traveling expenses of plaintiff to Lovelock, Nevada, to San

Francisco, California, to New York City and to various other places, for assays, for maps, for surveys, for expert services, for mining examinations and for reports, legal fees and an examination of titles and for preliminary work, for the organization of corporations and for telegraph and telephone, a large amount of moneys, in excess of \$8000.00.

## VII.

That plaintiff, relying upon said representations aforesaid, also gave his time and efforts to said enterprise and the consummation of said contract, during all of the time from April 2d to June 1st, 1919; that as a result of the expenditures aforesaid, time and efforts of the plaintiff, plaintiff succeeded and had pledged, by himself and others associated with him, an amount sufficient to meet any and all obligations of his under the terms of said contract and sufficient to entitle him to received the 62 per cent of the capital stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company and 62 per cent of one-half of the stock of the [898] Mill City Development Company, under the terms of said contract of April 2, 1919, Exhibit "C."

## VIII.

That said sum was pledged by plaintiff and others associated with him in the amount aforesaid, relying upon the representations of the defendants Nenzel, Poole, Friedman, Jones, Murrish, Hinch,

Huntington, Goodin, Twigg and Lena J. Friedman, and the plaintiff communicated said representations to his associates who pledged a large and substantial portion of said money to the plaintiff for the purpose of carrying out any and all of his obligations under the terms of said contract; that plaintiff, on or about, and between the 18th and 25th day of May, informed the defendants, Nenzel, Poole, Friedman, Jones, Murrish, Hinch, Huntington, Goodin, Twigg and Lena J. Friedman, that he was ready, able and willing to perform his obligations under the terms of said contract, Exhibit "C."

#### IX.

That on or about the first day of June, 1919, plaintiff discovered the falsity of the representations of said defendants and upon receipt of such information communicated the same to his associates who had agreed to furnish a large portion of the money necessary for the completion of the obligations to plaintiff under the terms of said contract of April 2d, Exhibit "C." That thereupon, his said associates withdrew from said undertaking and refused to go into the same and refused to advance any money whatsoever for it.

#### X.

That said defendants, Nenzel, Poole, Murrish, Friedman, [899] Jones, Hinch, Goodin, Twigg, J. C. Huntington and Lena J. Friedman, by said contract and agreement of April 2, 1919, Exhibit "C," also covenanted and agreed that such moneys as should be raised by the plaintiff should be

a loan to the defendants Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not in payment for stock, and that said loan was to be evidenced by the issuance of redeemable preferred stock with a maximum of 7 per cent accumulative interest, and that the said defendants would also cause a new company to be organized, to which the assets of said defendant corporation would be conveyed, or to so amend the present articles of the Nevada Humboldt Tungsten Mines Company as to effectuate this agreement, as shall be required by the plaintiff. That plaintiff, before the expiration of said contract, and on or about the — day of May, 1919, requested and demanded of said defendants that they so organize said new corporation or amend the articles of incorporation of Nevada Humboldt Tungsten Mines Company to comply with said provisions of the contract of April 2, 1919, Exhibit "C." That said defendants wholly neglected and refused and now continue and will continue to neglect and refuse to perform said contract of April 2, 1919, Exhibit "C," and refuse and neglect, and will continue to refuse and neglect to deliver to plaintiff 62 per cent of the stock of Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company and 62 per cent of one-half of the stock of the Mill City Development Company, under the terms of said contract of April 2, 1919, Exhibit "C." That plaintiff has per-



formed each and every covenant and obligation and agreement in said contract by him to be kept and performed. That said stock of said defendant corporations, [900] at and before the commencement of this suit, had no market value, and that the value thereof at the time the contract was made and entered into between the plaintiff and said defendants depended upon the operation and development of the property owned by the Nevada Humboldt Tungsten Mines Company, and particularly the mines and mining property thereof That the value of said stock cannot be exactly shown or definitely ascertained and that the continued working development of said property, mines and mining claims, together with the matters and things hereinafter mentioned, will increase the value of said property and the value of said stock; that there is no method of ascertaining the amount of damage that plaintiff has or will sustain by reason of the failure on the part of said defendants to transfer and deliver to said plaintiff the amount of stock to which he is entitled under said contract; that the value of said stock is wholly conjecture, speculative and uncertain and dependent on many and varied conditions, wholly beyond the control of either plaintiff or defendants.

## XI.

That since the institution of these suits, a bill has been introduced and has passed the House of Representatives of the National Congress, placing a duty of \$10.00 per unit on tariff; that said

bill has gone to the Senate of the United States and has been reported out of the proper committee, with a recommendation that it be passed as amended, with a duty of \$9.00 per unit on tungsten ores of the grade and character found in said mines and mining property of said Nevada Humboldt Tungsten Mines Company. That if said bill should become a law, the ores in said properties containing the same will greatly increase in value, the exact amount of which is impossible of ascertainment. [901]

## XII.

That on or about the 16th day of August, 1918, the defendant, Nevada Humboldt Tungsten Mines Company and its subsidiary, the defendant Tungsten Products Company, entered into a contract with the defendant W. J. Loring for the sale of all of its mines, mining property, and mining claims and particularly of its assets of every kind and character. That said contract was made and executed pursuant to resolution of the board of directors of said corporations, and that thereafter, said defendant corporations called meetings of their respective stockholders for the purpose of ratifying and confirming said contract with said W. J. Loring. That said meetings of stockholders were held without adequate or proper notice thereof to the stockholders of said corporations, and particularly to the plaintiff, a stockholder of the Nevada Humboldt Tungsten Mines Company. That said meetings were held without the giving of notice as required by the laws of the State of Nevada, and

particularly by the provisions of Chapter 76 of the Statutes of Nevada, 1913, page 65, entitled: "An Act to Amend an Act entitled, 'An Act providing a General Corporation Law,' approved March 16, 1903," approved March 12, 1913; and particularly of Section 2 thereof, which requires that at least 15 days' written notice shall be given of such meetings before the date of the holding thereof; that this plaintiff objected to said sale and to said contract, and promptly demanded the rescission and cancellation thereof; that thereafter, the officers, directors and stockholders of said corporation refused and neglected to set aside or cancel said pretended conveyances and said contracts or to commence any action in any court for the rescission or cancellation thereof. That thereupon, this plaintiff commenced an action in this court as a stockholder, to set aside, cancel and rescind said contracts and [902] said conveyances so unlawfully made by said corporations to said defendant W. J. Loring. That said W. J. Loring, took said deeds and said contract for said property from said defendant corporations with full notice of the rights and equities of the plaintiff herein and said Loring was duly and regularly informed thereof by this plaintiff before he had in anywise performed any part or portion of said contracts.

### XIII.

That said suit for the cancellation and rescission of said contract and said conveyances to said W. J. Loring, by the defendant corporations is now pending in this court; that plaintiff is in-

formed and believes, and upon such information and belief, alleges the fact to be, that the defendant Nevada Humboldt Tungsten Mines Company has called another meeting of stockholders to be held at Lovelock, Nevada, on April 19th to further authorize and ratify the sale of the property of the defendant corporation to the defendant W. J. Loring, and to authorize instrument of conveyance to said Loring by said defendant corporations of all of the property and assets of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company. That plaintiff is informed and believes, and upon such information and belief alleges the fact to be that the defendants Nenzel, Poole, Murrish, Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman, as stockholders of said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company and the Mill City Development Company will, at such meeting, vote all of their shares, which include the 62 per cent of the capital stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the capital stock of the Tungsten Products Company and 62 per cent of one-half of the [903] capital stock of the Mill City Development Company, all of which is rightfully the property of this plaintiff, in favor of authorizing the sale to W. J. Loring of all of the corporate property and assets of said defendant corporations, all of which will be to the great irreparable damage and injury of the plaintiff. That said defendants threaten to



and will vote said stock as aforesaid, unless restrained by order of this honorable court; that the effect of said sale of said property by said corporations will be practically to dissolve the same and in connection therewith, plaintiff is informed and believes that said defendant corporations and their officers and directors will, unless restrained by order of this Honorable Court, distribute to the stockholders, the proceeds from the sale of said mines, mining property and assets to be received from said W. J. Loring under the terms of said contract, so as aforesaid executed on the 16th day of August, 1918, all of which will be to the great and irreparable damage of plaintiff and will greatly depreciate the value of the stock to which he is entitled under the terms of said contract of April 2, 1919, Exhibit "C." That the distribution of the proceeds of said pretended sales, if permitted to be made to the stockholders as so threatened, will be a depletion of the capital of said corporations, all of which plaintiff is informed and believes is in violation of the laws of the State of Nevada, and of the rights of plaintiff as a stockholder in said corporation. That plaintiff is informed and believes, and upon such information, alleges the fact to be, that said defendant Loring will accept said ratification and such deeds and conveyances or instruments of conveyance as may be made pursuant thereto, all of which will cast a [904] cloud upon the title of the defendant corporations, of, in and to said mines

and mining claims and mining property, and will greatly depreciate the value of the shares of stock which plaintiff now owns and which plaintiff is entitled to receive under and by virtue of the terms of said contract, Exhibit "C," and plaintiff is informed and believes, and upon such information and belief, alleges the fact to be that said defendant Loring will, under and by virtue of such instruments of conveyance as will be authorized and executed at and by the authority of said meeting of April 19th, enter in and upon said mines and mining claims and work and extract therefrom the valuable minerals therein contained, all of which will be to the great damage and injury of the plaintiff as a stockholder in said corporations and to the damage and injury and depreciation of the stock which he is entitled to receive under and by virtue of said contract of April 2, 1919. That plaintiff is informed and believes, and upon such information and belief alleges the fact to be that said defendant corporations, and each of them, will, at said stockholders' meeting of April 19th, permit the defendants, Poole, Nenzel, Murrish, Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman, to vote the 62 per cent of the shares and capital stock of such corporation which are justly the property of this plaintiff, all of which will be to the great damage and irreparable injury of plaintiff.

#### XIV.

That plaintiff, on or about the 1st day of June,

1919, duly offered to perform each and every covenant and obligation on his part to be performed, under and by virtue of said contracts, Exhibits A, B and C, and particularly of Exhibit "C," provided that the said defendants would grant and allow to the plaintiff [905] an abatement of certain terms thereof for and on account of the false and fraudulent representations hereinbefore alleged; that plaintiff on or about the said first day of June, 1919, offered to advance, under the terms of said contracts, the sum of \$85,000.00, said sum to be used as follows by said corporations: \$10,000.00 to be set aside as a working capital for working and development of the mines, mining claims and mining grounds of the defendant Nevada Humboldt Tungsten Mines Company and for working and operation of the mill and reduction plant of the Tungsten Products Company; the remainder, to wit: \$75,000.00, to be used by said defendant corporations in paying ratably all creditors of the defendant corporations; and said plaintiff further offered to advance additional money, from time to time, as additional ores were blocked out, and that when 20,000 tons of additional ore were blocked out, in said mine, that plaintiff would advance as a loan to the corporations, sufficient money to liquidate the balance remaining due and unpaid to the creditors of the defendant corporations, in conformity with the provisions of said contract, Exhibit "C."

## XV.

Plaintiff further alleges that plaintiff, between January 16, 1919 and May 5, 1919, pursuant to and in conformity with his obligations under said contracts and particularly under the contract of January 16, 1919, Exhibit "A," loaned and advanced to the defendant corporations, the moneys which they requested to be advanced to them under said contract, to wit: an amount in excess of \$78,000.00.

## XVI.

That plaintiff has no plain, speedy and adequate [906] remedy at law. That irreparable damage and injury will result to the plaintiff if a temporary restraining order be not issued before notice can be served; that notice cannot be served of an application for an injunction before April 19, 1920; that the meeting of stockholders of the Nevada Humboldt Tungsten Mines Company hereinbefore referred to will be held on the said date, and at said time, said stockholders will authorize and cause to be executed, conveyances ratifying and confirming the contracts and conveyances heretofore executed to W. J. Loring; that said contracts and conveyances will constitute a cloud upon the property of the said Nevada Humboldt Tungsten Mines Company and it will be necessary to commence various and sundry proceedings in the courts for the removal of the same, the exact cost and expense of which is impossible to ascertainment; that a temporary restraining order should there-



fore issue, restraining the defendants as herein-after requested, without notice thereof.

WHEREFORE, Plaintiff prays for judgment and decree of this Honorable Court, decreeing that the defendants Poole, Nenzel, Murrish, L. A. Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman be compelled to specifically perform their said contracts and deliver to the plaintiff 62 per cent of the stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company and 62 per cent of the stock of the Mill City Development Company; that plaintiff have an abatement of the provisions of said contract, or of the whole thereof for and on account of the false and fraudulent representations of the defendants, as shall be determined by the court to be just and equitable.

That the defendants Poole, Nenzel, Murrish, L. A. [907] Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman, as stockholders, be enjoined *pendente lite* from voting 62 per cent of the stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company and 62 per cent of one-half of the stock of the Mill City Development Company at the special meeting of stockholders to be held at Lovelock, Nevada on the 19th day of April, 1920 at 2 o'clock P. M., or at any continuance of said meeting, or at any other meeting of stockholders until the further order of this court in

favor of further or at all ratifying, confirming or approving, or in anywise authorizing the sale and conveyances of the assets of the mines and mining claims of the defendant Nevada Humboldt Tungsten Mines Company to W. J. Loring, or to any other person or persons whomsoever, and enjoining, *pendente lite*, said defendants, their agents or attorneys, from in anywise authorizing the execution or delivery of any bills of sale, deeds or other instruments of conveyance which will convey or further assure to W. J. Loring, title of, in or to any of the property, mines or mining claims or assets of the Nevada Humboldt Tungsten Mines Company, and for an order enjoining the defendant corporations and their officers, agents and attorneys or their directors or any other persons acting under or through them from permitting to be voted at said special meeting of stockholders or at any continuation thereof, or at any other meetings of stockholders, until the further order of this Court, said 62 per cent of the stock of Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company and 62 per cent of one-half of the stock of the Mill City Development Company in favor of ratifying or confirming any instrument or contract for the sale of the [908] property and assets of the defendant corporation, Nevada Humboldt Tungsten Mines Company, or from executing any bills of sale or other instrument of conveyance from said Nevada Humboldt Tungsten Mines Company to W. J. Loring, or any person

or persons whomsoever, until further order of this Court; that said injunctions upon final hearing be made perpetual; that plaintiff have judgment for his costs herein incurred; that plaintiff have such other and further relief as may be just and equitable in the premises.

HOYT, NORCROSS, THATCHER,  
WOODBURN & HENLEY,  
Attorneys for Plaintiff. [909]

United States of America,  
State of Nevada,  
County of Washoe,—ss.

Geo. B. Thatcher, being first duly sworn, deposes and says: That he is attorney in fact and one of the attorneys for the plaintiff herein; that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters that he believes it to be true; that he makes this verification on behalf of the plaintiff, for the reason that the plaintiff is absent from the State of Nevada, where his said attorneys reside.

GEO. B. THATCHER.

Subscribed and sworn to before me, this 16th day  
of April, 1920.

[Seal] BENJ. J. HENLEY,  
Notary Public in and for the County of Esmeralda,  
State of Nevada. [910]

**Exhibit "A."**

THIS AGREEMENT made this sixteenth (16) day of January, 1919, between David Taylor, of Denver, Colorado, as first party, and the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under the laws of the State of Nevada, and the Tungsten Products Company, a corporation organized and existing under the laws of the State of Nevada, as second parties,

**WITNESSETH:**

1. That the said second parties in consideration of the agreement of the said first party to make the advances of money hereinafter specified, agree to deliver upon the dates hereinafter specified, f. o. b. cars Mill City, Nevada, in carload lots to said first party, as security for such advances and for the purpose of allowing said first party to sell the same, approximately One hundred and seventy (170) tons of scheelite concentrates, quality guaranteed as follows:

Minimum WO <sub>3</sub> .....	60.00%
Maximum sulphur .....	2.00%
Maximum Phosphorus .....	0.04%
Maximum Tin .....	Trace
Maximum Copper .....	Trace

Said concentrates to be shipped by second parties to such point or points as may be designated by the said first party, as follows:

A. On or about the first day of February, 1919,  
75 tons;



- B. On or about the first day of March, 1919, 35 tons;
  - C. On or about the first day of April, 1919, 30 tons;
  - D. On or about the first day of May, 1919, 30 tons;
- plus such additional amount as will be sufficient to give to said first party security at the then market price of said concentrates, for the advances herein provided. In all events said second parties [911] shall deliver said first party a minimum of 170 tons of said concentrates.

2. The said first party shall have complete control and entire charge of the selling of said concentrates, but he shall not sell the same at a price which will net the said second parties less than Ten Dollars (\$10.00) per unit WO<sub>3</sub> f. o. b. cars Mill City, Nevada, except as provided in paragraph 5 herein. The said first party however shall not unduly hold said concentrates for a price in excess of Fifteen Dollars (\$15.00) per unit of WO<sub>3</sub>.

3. The first party in consideration of the agreement of the second parties herein and in consideration of other good and valuable consideration, hereby agrees to advance as a loan to the second parties jointly and severally the sum of One Hundred Thousand Dollars (\$100,000), the same to be advanced as follows:

- A. \$10,000.00 upon the execution of this agreement;
- B. \$40,000.00 on or about the first day of February, 1919, upon the shipment referred to in paragraph 1A herein;
- C. \$16,667.00 on or about the first day of March,

1919, upon the shipment referred to in paragraph 1B herein;

D. \$16,667.00 on or about the first day of April, 1919, upon the shipment referred to in paragraph 1C herein;

E. \$16,666.00 on or about the first day of May, 1919, upon the shipment referred to in paragraph 1D herein;

—said advances shall be made by payment of sight drafts attached to railroad bill of lading; shipper's certificate of weight and sampling, and analysis of Hugh F. Watts, of Boulder, Colorado, drawn on the first party, care of First National Bank of Denver, Colorado. [912]

4. The said first party shall from the proceeds of the sale of said concentrates: First reimburse himself for all money advanced for transportation, valuation and selling expenses of said concentrates; Second, shall apply \$10.00 per unit of all concentrates sold up to date of sale to the discharge of the loans made hereunder to said second parties; Third, any balance remaining thereafter shall thereupon be divided between the parties hereto, one-half to the said first party and one-half to the said second parties. If at any time the value of said concentrates as determined by the market price of said concentrates which said first party shall have on hand as security as hereby provided, shall not equal the amount of said loan remaining unpaid together with advances for transportation, valuation and cost, then upon demand the said second parties shall deliver f. o. b. cars Mill City such additional amounts

of concentrates as will equal in value at the then market price of same the said remaining due and unpaid on account of said loans and advances for transportation, valuation and cost.

5. IT IS FURTHER UNDERSTOOD AND AGREED that in case the said first party before July 1, 1919, is unable to dispose of said concentrates for a price of Ten Dollars (\$10.00) or higher, net per unit WO<sub>3</sub> f. o. b. cars Mill City, Nevada, said first party after July 1, 1919, may dispose of said concentrates at the market price.

6. Wherever the word "Unit" is used herein it is understood to mean twenty (20) pounds of pure WO<sub>3</sub>.

7. Wherever the term "Market price" is herein used, the said market price shall be determined as follows: The said first [913] party shall secure from one or more reputable consumers of scheelite a firm offer for such concentrates as are then ready for immediate shipment, which said offer shall be submitted to said second parties and said second parties shall thereafter have forty-eight (48) hours to secure higher firm offers from some reputable and responsible consumers of said products. If said second parties do not obtain such higher firm offer, the offer received by said first party shall be the market price.

8. It is understood and agreed that part of the consideration for this agreement and for the advances herein made by said first party is the giving of an option by L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch,

John G. Huntington, J. T. Goodin, V. A. Twigg and Lena J. Friedman, to purchase over ninety-nine per cent (99%) of the capital stock of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company and all of the interest of said parties in the Mill City Development Company, said corporation all being organized and existing under the laws of the State of Nevada, which said option is executed on the same date as this contract. It is further understood that in case said L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg and Lena J. Friedman shall fail to carry out any of the terms or conditions of said option agreement during the life of this agreement, that said first party shall at his option, have the right to terminate this agreement and to cease to proceed under the same and said second parties herein shall be obligated to reimburse said first party for all money advanced and all expenses incurred in the carrying out of this agreement. [914]

9. Any reasonable delay of the performance of any of the conditions of this contract by either party hereto if arising from causes beyond the control of such party, shall not be considered a breach of contract by such party.

IN WITNESS WHEREOF, the first party has hereunto set his hand and seal, and the said second parties have caused these presents to be executed by their respective Presidents and Secretaries thereunto duly authorized and their corporate seal to be



hereunto affixed the day and year first above written.

DAVID TAYLOR. (Signed)  
NEV. HUMBOLDT TUNGSTEN  
MINES CO.

By L. A. FRIEDMAN,  
President.

By R. NENZEL,  
Secretary.

TUNGSTEN PRODUCTS COM-  
PANY,

By L. A. FRIEDMAN,  
President.

By R. NENZEL,  
Secretary.

By L. A. FRIEDMAN,  
Trustee.  
[915]

**Exhibit "B."**

THIS AGREEMENT MADE BETWEEN DAVID TAYLOR, of Denver, Colorado, party of the first part, and L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, all residents of Lovelock, Nevada, Being the holders of ninety-nine (99%) per cent of the capital stock of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, and L. A. Friedman, as Trustee, parties of the second part,

## WITNESSETH:

THAT, WHEREAS, said L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, are the owners and holders of stock in each of the above companies, the number of shares of stock in each company being set opposite their respective signatures hereto, and

WHEREAS, L. A. Friedman is Trustee for all other of said second parties hereton, of all of their interest in the Mill City Development Company, which said corporation is in the process of organization, and which said corporation has not yet issued its stock, and

WHEREAS, said second parties desire to sell all of their interest in the said Nevada Tungsten Mines Company and said Tungsten Products Company and said Mill City Development Company, all of which corporations are corporations organized and existing under the laws of the State of Nevada, and

WHEREAS, said first party is desirous of securing an option to purchase the entire interest of all of said second parties in all of said corporations, and

WHEREAS said first party has this day entered into a contract with the Nevada Humboldt Tungsten Mines Company, and said Tungsten Products Company to advance said corporations [916] the sum of One Hundred Thousand Dollars (\$100,000.-00) to enable said corporation to continue their business and operations and to discharge a portion of their indebtedness.

1. NOW, THEREFORE, in consideration of the premises and in consideration of the said first party hereby entering into said agreement to advance said One Hundred Thousand Dollars (\$100,000.00) to said corporation, said second parties hereby grant and give to said first party an option to purchase all of the stock held by said second parties in the Nevada Humboldt Tungsten Mines Company and in the Tungsten Products Company, and all of the interests of said second parties in the Mill City Development Company at the price and in the manner hereinafter specified. This option shall be good up to and including the sixteenth (16th) day of July, 1919.

2. The price to be paid for all of said stock in all of said corporations owned by all of said second parties shall be fifty (50¢) cents per share of stock held by said second parties in the Nevada Humboldt Tungsten Mines Company, and said second parties shall transfer, assign and set over unto said first party without further charge or cost to said first party, all of the stock owned by said second parties in the Tungsten Products Company and the Mill City Development Company which they now own or shall be entitled to upon the complete organization of the Mill City Development Company; total purchase price shall be \$498,400.00.

3. Said second parties shall during the life of this option pay all of the debts and obligations of all of the said corporations; and agree that said corporations will maintain their plants and equipment in their present condition of efficiency, and will

continue the present development work as it has heretofore been conducted. Said second parties will also complete [917] the organization of the Mill City Development Company and discharge all of their obligations to said Mill City Development Company.

4. It is further understood and agreed that no dividends of any kind, nature or description shall be paid by said corporations during the life of this option, and that none of the assets of said corporation shall be disposed of other than Scheelite concentrates provided that replacements of equipment shall be permitted.

5. It is further understood and agreed that no increase of salaries or bonuses shall be made, given, or paid to any officers or directors or stockholders of said corporations during the life of this option.

6. It is further understood and agreed that in case said option is exercised and said debts and obligations of said corporations are not paid at the time of the exercise of said option, the said first party shall deduct a sufficient amount from the purchase price to pay all outstanding debts and obligations and engagements of said corporations.

7. It is understood and agreed that the purchase price for said stock shall be paid as follows:

\$100,000.00 at the time said option is exercised.

\$25,000.00 on the first of each and every month thereafter until the total purchase price has been paid.

8. Said option shall be exercised by giving notice in writing to the Wells Fargo Nevada National Bank



of San Francisco, and by mailing a written notice of such exercise of said option addressed to each of said parties, addressed to Lovelock, Nevada. Payments shall be made through the Wells Fargo Nevada National Bank of San Francisco, California.

9. Said second parties agree to deposit all of the stock of the Tungsten Products Company owned by said second [918] parties, and Two Hundred Eighty-five Thousand (285,000) shares of stock in the Nevada Humboldt Tungsten Mines Company within ten (10) days from the execution of this option in the Wells Fargo Nevada National Bank of San Francisco. It is understood and agreed that the remaining shares of stock in said Nevada Humboldt Tungsten Mines Company, upon which option is hereby given, owned severally by said second parties are now up as collateral for certain loans to said individuals, and as to such stock, it is hereby agreed that within Ten (10) days from the execution of this agreement, each and every of the parties signatory hereto, who has such stock now up as collateral shall notify by letter the bank, person or company holding said stock as security of the giving of an option on said stock and shall further instruct said bank, firm or company in the event that the amount secured by such stock is not paid on or before July 15, 1919, to send the evidence of such debt together with the stock to the Wells Fargo Nevada National Bank for collection, with instructions to said bank, upon the payment of the obligation to place the stock, security therefor, with the escrow herein mentioned, and forthwith mail to

the first party a true and correct copy of said letter.

10. The said second parties agree to discharge said loans prior to the exercise of said option. In case said second parties do not discharge said loans, said second parties agree that the Wells Fargo Nevada National Bank shall from the proceeds of the first One Hundred Thousand Dollars (\$100,000.00) deposited, pay said indebtedness to said parties and hold the same until the full purchase price has been paid. Upon the payment of the full purchase price of said stock all of said stock shall be delivered to said first party. [919]

11. Said second parties further agree to deposit in escrow with said Wells Fargo Nevada National Bank resignations of all of their directors and to deliver one resignation to said first party for every One Hundred Thousand Dollars (\$100,000.00) is paid. Said second parties further agree that they will cause to be immediately elected to said Board of Directors of said corporation in place of the director resigning, the nominee of said first party. Upon the exercise of this option and the payment of said One Hundred Thousand Dollars (\$100,000.00), the management of said corporations shall be turned over to said first party, and the said second parties will cause the Board of Directors of said corporations to name as general manager of Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, the nominee of said first party, which general manager shall have full power and authority to remove any and all superintendents, foremen, agents, servants

and employees of said corporations, and to employ any and all necessary superintendents, foremen, agents, servants and employees as may be necessary to operate to said properties.

12. In the event said first party shall delay for a period of five (5) days to make any of the loans to said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company called for in said loan agreement, the said second parties in their discretion may terminate this option by giving immediate notice thereof in writing to said first party.

13. Second parties agree that said One Hundred Thousand Dollars (\$100,00.00) loaned said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company shall be used solely to pay operating expenses, to purchase of reasonable supplies and reasonable equipment, and to discharge the indebtedness of said corporations. [920]

14. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 16th day of January, 1919.

(Signed) DAVID TAYLOR,

First Party.

L. A. FRIEDMAN,	106,640 shares
R. NENZEL	102,000 shares
C. W. POOLE,	119,160 shares
H. J. MURRISH,	101,000 shares
( C. E. JONES	100,000 shares
( G. K. HINCH,	10,000 shares

( JOHN G. HUNTINGTON	50,000 shares
( J. T. GOODIN,	5,000 shares
( V. A. TWIGG,	3,000 shares

Signed by  
R. NENZEL,  
Attorney in Fact.  
LENA FRIEDMAN, 400,000 shares  
Second Parties.  
L. A. FRIEDMAN,  
Trustee. [921]

**Exhibit "C."**

THIS AGREEMENT this day entered into between David Taylor, of Denver, Colorado, first party, and L. A. Friedman, Lena J. Friedman, C. W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and H. J. Murrish, second party,

**WITNESSETH:**

WHEREAS the parties hereto, on or about January 16, 1919, entered into an agreement in respect to the purchase and sale of certain stock of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, reference to which contract is hereby made and which said contract is made a part hereof, and

WHEREAS the Nevada Humboldt Tungsten Mines Company on the same date, entered into an agreement with the said David Taylor for the advance of certain moneys on scheelite concentrates,



as more particularly appears in said agreement to which reference is hereby made, and

WHEREAS this agreement is supplemental to both of said agreements and all of said agreements are now to be read together and considered as one in so far as applicable, due reference being had to the changes herein made, and

WHEREAS, owing to the demoralization of the tungsten market it seems impossible for the said David Taylor to market scheelite concentrates or to interest parties in the purchase of tungsten properties, and for that reason it is deemed probable that said Taylor will not be able to exercise his option contained in the above-mentioned agreement, and

WHEREAS, by reason of the facts herein named it may become [922] impossible for the Nevada Humboldt Tungsten Mines Company and the other companies above referred to to secure sufficient funds for the liquidation of their indebtedness, and

WHEREAS it is the purpose of this agreement to so modify the said option as to enable the said Nevada Humboldt Tungsten Mines Company and its allied companies to pay its debts, continue its operation and secure itself from the jeopardy of possible loss through suits by its creditors,

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) each to the other in hand paid, it is mutually understood, covenanted and agreed as follows, to wit:

1. The first party undertakes to secure by borrowing for the Nevada Humboldt Tungsten Mines

Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of Two Hundred and Twenty Thousand (\$220,000.00) Dollars, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing such sum of money, 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company, 62% of one-half of the issued capital stock of the [923] Mill City Development Company; that a deposit of the amount necessary to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided.

IT IS MUTUALLY UNDERSTOOD AND  
AGREED:

A. That the said sum raised by the first party herein is a loan to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not

a payment for stock; and that same is to be evidenced by the issuance of redeemable preferred stock with a maximum of 7% cumulative interest, provided that said stock shall be sold for less than 95% of par net to the Company.

B. That the second parties hereto will cause a new company to be organized to which the assets of the companies herein described shall be conveyed or shall amend the present articles of the Nevada Humboldt Tungsten Mines Company and its allied companies hereinbefore mentioned, in order to effectuate this agreement as shall be required by the first party.

C. It is agreed that in such incorporation, or in the amendment above provided, due and proper provision shall be made (1) that 80% of the Board of Directors must approve the sale of any of the property of the Company or the purchase of additional property; (2) that the cumulative voting power of the common stock shall not be taken away; (3) that the net receipts from any relief received from the United States Government under the War-Minerals Relief Act of the corporations herein mentioned or any of them, shall inure to the benefit of such new corporation as may [924] be formed; (4) that profits shall be distributed whenever same have accumulated to the amount of Fifty Thousand (\$50,000.00) Dollars or over, after the debts are paid, unless contrary provided by a vote of 80% of the Directors; (5) and further, that the preferred stock shall be redeemed out of the profits on June 30 or December 31, of every year, whenever the sum

of Fifty Thousand (\$50,000.00) Dollars is accumulated, and before any dividends are paid on the common stock.

D. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that the performance of this agreement shall release the first party from any and all obligation to pay the purchase price of said stock mentioned in the option hereinbefore referred to.

E. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided in Paragraph 1 hereof.

Time is the essence of this agreement, and each and every clause hereof shall bind and benefit the heirs and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 2d day of April, 1919,

(Signed)      DAVID TAYLOR,  
First Party. [925]

C. W. POOLE,  
R. NENZEL,  
H. J. MURRISH,



( L. A. FRIEDMAN,  
( LENA J. FRIEDMAN,  
( C. H. JONES,  
( G. K. HINCH,  
( J. T. GOODIN,

By R. NENZEL.

Attorney in Fact.

( V. A. TWIGG,  
( J. G. HUNTINGTON,

Second parties.

C. W. POOLE,

Attorney in Fact.

[Endorsed]: (Original.) No. B-7. In the United States District Court, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Complaint. Filed this 17th day of April, 1920. T. J. Edwards, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada, Attorneys for Plaintiff. [925a]

In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W.  
POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON, and LENA J.  
FRIEDMAN, Individually,

Defendants.

**Affidavit of David Taylor.**

United States of America,  
City and County of Denver,  
State of Colorado,—ss.

David Taylor, being first duly sworn, deposes and says: That he has read the complaint in the above-entitled action and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes it to be true.

DAVID TAYLOR.

Subscribed and sworn to before me this 24th day of April, 1920.

My commission expires August 16, 1920.

[Seal]

ANNA RAND,

Notary Public.

[Endorsed]: Original. No. B-7. In the United States District Court, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Affidavit (verification of Complaint). Filed this 30th day of April, 1920. T. J. Edwards, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada, Attorneys for Plaintiff. [926]

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### **Subpoena in Equity.**

DISTRICT OF NEVADA,—ss.

The President of the United States of America, to Nevada Humboldt Tungsten Mines Company, a Corporation; Tungsten Products Company, a Corporation; Mill City Development Company, a Corporation; W. J. Loring; C. W. Poole; R. Nenzel; H. J. Murrish; L. A. Friedman; C. H. Jones; G. K. Hinch; J. T. Goodin; V. A. Twigg; J. G. Huntington and Lena J. Friedman, GREETING:

You are hereby commanded that you personally appear before the Judge of our District Court of the United States for the District of Nevada, at the courtroom of said court in Carson City, Nevada (Federal Building), to answer unto a bill of com-

plaint exhibited against you in said court, by David Taylor, and to do further and receive whatever said court shall have considered in that behalf.

WITNESS the Honorable E. S. FARRINGTON, Judge of the District Court of the United States for the District of Nevada, and the seal of said court hereunto affixed this 17th day of April, 1920, and of the year of our Independence the 144th.

[Seal]

Attest: T. J. EDWARDS,

Clerk.

By E. O. Patterson,

Deputy.

HOYT, NORCROSS, THATCHER, WOOD-  
BURN & HENLEY,

Solicitors for Plaintiff.

#### MEMORANDUM.

The defendants are required to file their answers or other defense in the clerk's office at Carson City, Nevada, on or before the twentieth day after service, exclusive of the day thereof; otherwise the bill may be taken *pro confesso*.

T. J. EDWARDS,

Clerk.

By E. O. Patterson,

Deputy.

#### MARSHAL'S RETURNS.

District of Nevada,—ss.

I hereby certify and return, that on the 17th day of April, 1920, I received the within subpoena in equity and that after diligent search, I am unable



to find the within-named defendants W. J. Loring and L. A. Friedman within my district.

THOMAS PICKETT,

United States Marshal.

By F. A. Sawyer,

Deputy United States Marshal. [927]

RETURN ON SERVE OF WRIT.

United States of America,

District of Nevada,—ss.

I hereby certify and return that I served the annexed Subpoena in Equity on the therein named Nevada Humboldt Tungsten Mines Co., a corp., by serving R. Nenzel, as Secy. of said corp., C. W. Poole, R. Nenzel, H. J. Murrish, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington, Lena J. Friedman by handing to and leaving a true and correct copy thereof with each personally at Lovelock, Nevada, in said District, on the 19th day of April, A. D. 1920.

THOMAS PICKETT,

U. S. Marshal.

By F. A. Sawyer,

Deputy.

Tungsten Products Co., a Corp., and Mill City Development Co., a Corp., not served.

Order of Attorney for Plaintiff.

[Endorsed]: Original. No. B-7. U. S. District Court, District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Subpoena in Equity. Filed on Return May 15th, 1920. T. J. Edwards, Clerk. Civil Docket No. 812. [928]

In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J.  
C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Order to Show Cause and Restraining Order.**

To the Above-named Defendants:

YOU, and EACH OF YOU will please take notice that on the 27th day of April, 1920, the plaintiff will apply to the above-entitled court for a temporary injunction against certain of the defendants, restraining them and each of them, their agents, servants and attorneys, from doing or performing certain acts and things, all of which more fully appear by the verified complaint on file in the above-entitled action, and from the prayer thereof, and as more particularly appears in the restraining order hereinafter set forth. You, the said defendants above named, will therefore show cause at ten

o'clock A. M. on the 27th day of April, 1920, why you and each of you should not be restrained in accordance with the prayer of plaintiff's verified bill of complaint.

It further appearing from the verified bill of complaint that immediate and irreparable loss or damage will result before the matter can be heard on notice, it is therefore ORDERED, that [929] pending such hearing, or until further order of the Court, the defendants, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, and each of them, their agents, servants, attorneys and proxies, be, and they are hereby enjoined from voting sixty-two (62) per cent of the stock of the Nevada Humboldt Tungsten Mines Company at a special meeting of stockholders called by the stockholders of the Nevada Humboldt Tungsten Mines Company to be held at Lovelock, Nevada, on the 19th day of April, 1920, at two o'clock P. M., or at any continuance of said meeting, or at any other meeting of stockholders, until the further order of this Court, in favor of further or at all ratifying, confirming or approving or in anywise authorizing the sale or conveyance of the assets or the mines and mining claims of the defendant, Nevada Humboldt Tungsten Mines Company to W. J. Loring, or any other person or persons whomsoever, and enjoining and restraining said defendants, their agents or attorneys from in anywise authorizing the execution or delivery of any bills of sale, deeds or other instrument of con-

veyance which will convey or further issue to W. J. Loring, title of, in or to property, assets, mines and mining claims of the Nevada Humboldt Tungsten Mines Company, and defendant corporations, and particularly the defendant corporation, Nevada Humboldt Tungsten Mines Company, its officers, agents and attorneys, and all persons acting under, by or through them, are hereby restrained from permitting said individual defendants above named from voting at said special meeting of the stockholders, or at any continuation thereof, or at any other meeting of stockholders during the life of this order, until further order of this Court, said sixty-two (62%) per cent of the stock of the Nevada Humboldt Tungsten Mines Company in favor of [930] ratifying or confirming any sale of the property and assets of said defendant corporation, Nevada Humboldt Tungsten Mines Company, to W. J. Loring, or any person or persons whomsoever.

IT IS FURTHER ORDERED that plaintiff shall file a good and sufficient undertaking in the sum of One Thousand (\$1000.00) Dollars, indemnifying the defendants from any and all damage which may be occasioned by the issuance of this restraining order.

Dated, this 17th day of April, 1920.

E. S. FARRINGTON,

District Judge.

RETURNS.

District of Nevada,—ss.

I hereby certify and return, that on the 18th day of April, 1920, I received the within Order to Show



Cause and Rest. Order and that after diligent search, I am unable to find the within named defendants W. J. Loring and L. A. Friedman within my district.

THOMAS PICKETT,  
United States Marshal.

By F. A. Sawyer,  
Deputy United States Marshal.

RETURN ON SERVICE OF WRIT.

United States of America,  
District of Nevada,—ss.

I hereby certify and return that I served the annexed Order to show cause and restraining order on the therein named Nevada Humboldt Tungsten Mines Co., by serving R. Nenzel, as Secy. of said company, C. W. Poole, R. Nenzel, H. J. Murrish, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington, Lena J. Friedman by *hand* to and leaving a true and correct copy thereof with each personally at Lovelock, Nevada, in said District on the 19th day of April, A. D. 1920.

THOMAS PICKETT,  
U. S. Marshal.

By F. A. Sawyer,  
Deputy.

Tungsten Products Co., and Mill City Development Co., a Corp., not served.

Order of Attorney for Plaintiff.

[Endorsed]: No. B-7. (Original.) In the United States District Court, in and for the District of Nevada. David Taylor, Plaintiff, vs. Ne-

vada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Order to Show Cause and Restraining Order. Filed this 15th day of May, 1920. T. J. Edwards, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada, Attorneys for Plaintiff. Civil Docket No. 812. [931]

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MINUTES OF COURT—APRIL 26, 1920.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEV.-HUMB. TUNGSTEN CO., et al.

**Minutes of Court—April 26, 1920—Order Continuing Hearing on Restraining Order to May 10, 1920.**

Upon motion of Mr. Cooke, of counsel for defendants, it is ordered that the hearing upon the restraining order and order to show cause be, and the same is hereby, continued until the 10th day of May next.

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MINUTES OF COURT—APRIL 27, 1920.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEV.-HUMB. TUNGSTEN CO., et al.

**Minutes of Court—April 27, 1920—Order Continuing Hearing on Restraining Order to May 12, 1920.**

On motion of Mr. Cooke, of counsel for defendants, it is ordered the hearing upon the order to show cause, be, and is further continued until the 12th day of May, next. [932]

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In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W. POOLE,  
R. NENZEL, H. J. MURRISH, L. A. FRIED-  
MAN, C. H. JONES, G. K. HINCH, J. T.  
GOODIN, V. A. TWIGG, J. C. HUNTING-  
TON and LENA J. FRIEDMAN, Individu-  
ally,

Defendants.

**Stipulation and Order Giving Defendants Time to  
Answer.**

IT IS HEREBY STIPULATED that the de-  
fendants, Nevada Humboldt Tungsten Mines Com-  
pany, a corporation, Tungsten Products Company,

a corporation, Mill City Development Company, a corporation, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, individually, may have and they are each hereby given to and including the 15th day of May, 1920, in which to appear, move to dismiss, answer, or take such other action herein, or file such other defense herein as they may be advised.

HOYT, NORCROSS, THATCHER,  
WOODBURN & HENLEY,  
Attorneys for Plaintiff. [933]

GOOD CAUSE APPEARING THEREFOR, and pursuant to the above stipulation, it is hereby ordered that the defendants, Nevada Humboldt Tungsten Mines Company, a corporation, Tungsten Products Company, a corporation, Mill City Development Company, a corporation, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman may have and each is hereby given to and including the 15th day of May, 1920, in which to appear, move to dismiss, answer, or take such other action herein, or file such other defense herein as they may be advised.

Done in open Court this 5th day of May, 1920.

E. S. FARRINGTON,  
United States District Judge.



[Endorsed]: No. B-7. In the United States District Court, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a corporation, et als., Defendants. Stipulation and Order Further Time to Plead. Filed May 5th, 1920. T. J. Edwards, Clerk. [934]

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MINUTES OF COURT—MAY 11, 1920.

No. B-7.

DAVID TAYLOR

vs.

NEVADA TUNGSTEN M. CO., et al.

**Minutes of Court—May 11, 1920—Order Continuing Hearing on Order to Show Cause to May 15, 1920.**

On motion and by consent of counsel for the respective parties, it is ordered that the hearing upon the order to show cause be, and is, continued until the 15th instant. [935]

In the United States District Court, in and for  
the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W. POOLE,  
R. NENZEL, H. J. MURRISH, L. A. FRIED-  
MAN, C. H. JONES, G. K. HINCH, J. T.  
GOODIN, V. A. TWIGG, J. C. HUNTING-  
TON and LENA J. FRIEDMAN, Individu-  
ally,

Defendants.

**Response of W. J. Loring to Order to Show Cause.**

Comes now W. J. Loring, one of the defendants  
in the above-entitled action, and in response to  
the order to show cause issued out of this Honor-  
able Court on the 17th day of April, 1920, respect-  
fully shows to the Court as follows:

**I.**

This defendant avers that while it is true that  
on the 16th day of August, 1919, the plaintiff,  
Taylor, entered into the contract concerning stock  
of the Nevada Humboldt Tungsten Mines Com-  
pany, a copy of which is annexed to plaintiff's

complaint marked Exhibit "B," and while it is also true that plaintiff on the 2d day of April, 1919, entered into the contract concerning stock of said corporation, a copy of [936] which is annexed to plaintiff's complaint marked Exhibit "C," nevertheless it is also true that both of said contracts wholly expired by limitation and became null and void on or before the 16th day of June, 1919.

In that behalf this defendant avers:

1. That the said agreement of April 2d, 1919, contains the following provisions among others:

"It is further mutually covenanted and agreed that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided for in paragraph one hereof."

"Time is of the essence of this agreement." That the foregoing provisions of said contract, Exhibit "C," were never changed or modified nor was the time limit therein provided for ever extended.

2. That in and by said contract Exhibit "C," the said Taylor undertook, among other things, to secure by borrowing on or before June 16th, 1919, for the Nevada Humboldt Tungsten Mines Company and its allied companies a sum sufficient

to liquidate the indebtedness of said Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the proportion of the indebtedness of the Mill City Development Company which the parties of the second part to the said agreement then owed, said indebtedness being then estimated to be the sum of Two Hundred Twenty Thousand Dollars (\$220,000.)

3. That it was further provided in and by said contract Exhibit "C," that when and if the plaintiff, Taylor, should secure the said sum sufficient to liquidate the entire indebtedness as above provided, then the parties of the second part to said agreement would transfer and deliver to him in full payment for services rendered in securing the aforesaid sum of [937] money sixty-two (62) per cent of the issued capital stock of Nevada Humboldt Tungsten Mines Company, sixty-two (62) per cent of the issued capital stock of the Tungsten Products Company and sixty-two (62) per cent of one-half of the issued capital stock of the Mill City Development Company.

4. That it was further provided in said Exhibit "C," that a deposit of the amount necessary to liquidate the indebtedness as in said contract, Exhibit "C," set forth in the Wells Fargo Nevada National Bank should be sufficient evidence of the performance of the conditions called for by said contract to entitle the said Taylor to transfer and delivery of the aforesaid shares of stock in said respective corporations.



5. That the said plaintiff did not, as provided for in said agreement, Exhibit "C," secure by borrowing or otherwise for the Nevada Humboldt Tungsten Mines Company and its said allied companies any sum of money whatsoever, and that the said 16th day of June, 1919, came and went without any performance whatsoever by the plaintiff, Taylor, of his aforesaid undertaking to secure the money provided for in said Exhibit "C."

6. That thereafter and on the 9th day of August, 1919, the said David Taylor made oath to a complaint against the parties of the second part to said contract, Exhibit "C," wherein he alleged among other things, that he had been induced to enter into the said contract, Exhibit "C," by reason of the false and fraudulent representations of the parties of the second part to said instrument. And he further alleged on oath in said complaint that during all of the time from April 2d, to June 1st, 1919, he had given his time and effort to the consummation of said contract, Exhibit "C," and that he had expended upwards of Eight Thousand Dollars (\$8,000) for traveling expenses, assays, maps, surveys, expert services, mining [938] examinations, reports, legal fees, examination of titles, preliminary work, the organization of corporations, and for telegraph and telephone; and that as a result of the said expenditure of time and efforts, he succeeded and had pledged himself and others associated with him an amount sufficient to meet any and all obligations of his under said contract, Exhibit "C" and sufficient to enable him to

receive the shares of stock in the several corporations as therein provided for. But said plaintiff, Taylor, further alleged under oath in said complaint that on the 1st day of June, 1919, he had discovered the falsity of the representations of the defendants, and that thereupon he had communicated the same to his associates who had agreed to furnish a large portion of the money necessary for the completion of the obligations of plaintiff under said contract, and that thereupon his said associates withdrew from said undertaking and refused to go into the same or advance any money, whatsoever, for it.

7. In the said complaint said plaintiff, Taylor, further made oath that the said Nevada Humboldt Tungsten Mines Company and its said allied companies were each and all insolvent, that their debts and obligations were about One Hundred and Fifty Thousand Dollars (\$150,000,) and that the total value of their assets, including all ores developed, did not on the 2d day of April, 1919, or on the said 9th day of August, 1919, exceed the sum of One Hundred Twenty Thousand Dollars, (\$120,000.) And the said Taylor further made oath therein that had the representations of the defendants been true, the value of the sixty-two (62) per cent of the shares of stock in the respective corporations to which he would have been entitled under the said Exhibit "C" would have been One Hundred Five Thousand Four Hundred Dollars (\$105,400). [939] And the said Taylor further therein made claim under oath that because

of the alleged false and fraudulent representations so alleged by him, he had been damaged in the total sum of One Hundred Fourteen Thousand Five Hundred Seventy Nine and 44/100 Dollars (\$114,579.44); said claim being made up of the aforesaid sum of One Hundred Five Thousand Four Hundred Dollars (\$105,400) and the moneys so alleged to have been expended by him in his efforts to carry out the obligations imposed upon him by the said Exhibit "C."

8. That thereafter the said David Taylor caused said complaint to be filed in this Honorable Court, all of which more fully appears from the said complaint in the said action, which said action is still pending in this Honorable Court and is numbered "Docket 2263" upon its records, to which complaint reference is hereby made.

9. That after the said complaint had been filed, this defendant on the 16th day of August, 1919, made and entered into a contract with the Nevada Humboldt Tungsten Mines Company and others, a full, true and correct copy of which is hereunto annexed, marked Exhibit 1 and is hereby referred to and made a part hereof.

10. That in and by said contract Exhibit 1, said Nevada Humboldt Tungsten Mines Company agreed to sell to this defendant, and this defendant agreed to purchase from said corporation, all of its property and assets, with certain exceptions, all of which more fully appears from the said contract, Exhibit 1.

That this defendant agreed to pay for said prop-

erty a total of Three Hundred Thirty Three Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$333,333.33) in installments as follows: [940] \$50,000 on or before the 1st day of September, 1919;

\$50,000 on or before the 1st day of October, 1919;  
50,000 on or before the 15th day of November, 1919;  
\$50,000 on or before the 27th day of December, 1919;  
\$33,333.33 on or before the 4th day of February, 1920;

\$25,000 on or before the 4th day of May, 1920;  
\$25,000 on or before the 4th day of August, 1920;  
\$25,000 on or before the 4th day of November, 1920;  
and

\$25,000 on or before the 4th day of February, 1921.

11. That on said 16th day of August, 1919, stockholders owning and holding nine hundred ninety-one thousand eight hundred (991,800) shares of the capital stock upon the books of the Nevada Humboldt Tungsten Mines Company out of a total capitalization of one million (1,000,000) shares, made and executed a written instrument of ratification of said contract, Exhibit 1, a full, true and correct copy of which ratification is hereunto annexed, marked Exhibit 2, and is hereby made a part hereof.

That on the same day the stockholders owning and holding all of the issued capital stock of the Tungsten Products Company made and executed a written ratification of the said contract, Exhibit 1, a full, true and correct copy of which ratification is hereunto annexed, marked Exhibit 3 and is hereby made a part hereof.



United States  
2  
Circuit Court of Appeals

For the Ninth Circuit.

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Transcript of Record.

(IN FOUR VOLUMES.)

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DAVID TAYLOR,

Appellant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY,  
a Corporation, TUNGSTEN PRODUCTS COMPANY,  
a Corporation, MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C. W POOLE,  
R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN,  
C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Appellees.

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VOLUME IV.

(Pages 1185 to 1509, Inclusive.)

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Upon Appeal from the United States District Court for the  
District of Nevada.

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FILED

SEP 7 - 1922

F. D. MONCKTON,  
CLERK.

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United States  
Circuit Court of Appeals

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Upon Appeal from the United States District Court for the  
District of Nevada.





That also on the same day at a meeting of the stockholders of said Tungsten Products Company, at which meeting all of the stockholders of said corporation were present, a resolution was duly passed and adopted by a vote of the stockholders owning and holding all of the capital stock of said Tungsten Products Company, authorizing, ratifying, confirming and approving the transfer of the properties of said corporation to this defendant in accordance with the terms and provisions of said written instrument, hereunto annexed, marked Exhibit 1. [941]

That thereafter a meeting of the stockholders of said Nevada Humboldt Tungsten Mines Company was called to be held on the 23d day of August, 1919. That notice of said meeting and of the purposes and objects thereof was given to each and all of the stockholders of said corporation in the manner provided for in the by-laws of said corporation five days prior to the date on which the said meeting was held. That at said meeting there were present in person or by proxy stockholders representing and owning nine hundred forty one thousand eight hundred (941,800) shares out of a total of one million (1,000,000) shares of the capital stock of said corporation. That although the plaintiff, Taylor, did not attend the said meeting in person, he nevertheless knew that the same was to be held at said time and place and caused a communication to be delivered to said meeting.

That at said meeting resolution authorizing the sale and transfer provided for in Exhibit 1 were

passed and adopted by stockholders owning and holding 941,800 shares out of the aforesaid total capitalization of one million (1,000,000) shares. Full, true and correct copies of said resolutions are hereunto annexed, marked Exhibit 4 and are hereby referred to and made a part hereof.

12. That thereafter and pursuant to the said resolutions deeds and bills of sale were duly executed to this defendant in accordance with said contract, Exhibit 1, transferring and conveying to this defendant the property, real and personal, so agreed to be transferred and conveyed to him by the aforesaid agreement, Exhibit 1.

13. That contemporaneously with the execution and delivery of said deeds and bills of sale this defendant executed and delivered to Nevada Humboldt Tungsten Mines Company and [942] and Tungsten Products Company a mortgage as called for by the said Exhibit 1. A copy of said mortgage is hereunto annexed, marked Exhibit 5 and is hereby referred to and made a part hereof.

14. That pursuant to the terms and provisions of said contract, Exhibit 1, this defendant entered into possession of all of the property, real and personal, which he agreed to purchase under the terms of said contract, Exhibit 1, and he and his successors ever since on or about the 16th day of August, 1919, have continued to be and now are in possession thereof.

15. That pursuant to the terms of said contract, Exhibit 1, and said mortgage, Exhibit 5, this defendant has already paid, or caused to be paid, to

the said Nevada Humboldt Tungsten Mines Company and Tungsten Products Company the following sums of money at the following times:

\$50,000 on the 1st day of September, 1919;

\$50,000 on the 1st day of October, 1919;

\$50,000 on the 15th day of November, 1919;

\$50,000 on the 27th day of December, 1919;

\$33,333.33 on the 4th day of February, 1920;

\$25,000 on the 4th day of May, 1920.

16. That the said sums of money so paid pursuant to said contract, Exhibit 1, and said mortgage, Exhibit 5, aggregating Two Hundred Fifty-eight Thousand Three Hundred Thirty-three and 33/100 Dollars (\$258,333.33), have been received by said corporations and that more than Two Hundred Thousand Dollars (\$200,000) of said sums has been actually used by them in the payment of their debts and obligations, and that upwards of One Hundred Thirty-three Thousand Two Hundred Sixty-nine and 99/100 Dollars (\$133,269.99) of said amount has been actually used by said Nevada Humboldt Tungsten Mines Company in the payment of its debts and obligations. [943]

## II.

This defendant further represents to this Honorable Court that in equity and good conscience plaintiff is estopped by his acts and conduct from objecting to the execution of instruments of further assurance to this defendant or from in any manner questioning the validity of said agreement, Exhibit 1, or the title whereunder this defendant acquired

said real and personal property and the possession thereof. In that behalf this defendant avers:

1. That among the debts or obligations paid out of moneys received as aforesaid by Nevada Humboldt Tungsten Mines Company was a claim alleged by the plaintiff, Taylor, to be due and owing from the said corporation to him, amounting to \$9179.44. That the said plaintiff, Taylor, received and accepted in full settlement of his said claim the sum of Seven Thousand Three Hundred Thirty-four and 4/100 Dollars (\$7334.04), which amount was paid to him as follows: \$1,000 on the 8th day of January, 1920, and \$6,334.04 on the 13th day of February, 1920. That said Taylor, at the time of receiving said payments, well knew that the source of said money was the said transaction, and that this defendant, Loring, had paid in, and caused to be paid in, the said money to the said corporation on account of the purchase price of said properties as provided for in the agreement of August 16th, 1919 (Exhibit 1), and in the mortgage (Exhibit 5) made in pursuance thereof.

### III.

Further answering the said order to show cause, this defendant respectfully represents:

1. That the plaintiff, Taylor, prior to the purchase by this defendant of said properties and prior to the execution of Exhibit 1 and prior to the payment of any moneys by this [944] defendant on account of the purchase price thereof, had elected to rely upon and pursue a remedy concerning the matters and things now complained of by him,



which was wholly inconsistent with the remedy which he seeks in this action and which in equity and good conscience prevents him from seeking the relief prayed for on this order to show cause. In that behalf this defendant avers:

1. That on or about the 10th day of August, 1919, and after the period fixed by the contract, Plaintiff's Exhibit "C" for the expiration of said contract by limitation, and before this defendant entered into the contract, Exhibit 1, the plaintiff, Taylor, with full knowledge of all of the matters now relied upon and alleged by him in his complaint in this present action as having taken place prior to the said 10th day of August, 1919, declared and represented to this defendant, W. J. Loring, that he, said Taylor, had a case either for compelling the present stockholders of the Nevada Humboldt Tungsten Mines Company to assign to him control of the stock of said corporation, or as an alternative remedy, an action for heavy damages against the said stockholders.

2. That thereafter on the 16th day of August, 1919, the said plaintiff elected to and did pursue the aforesaid alternative remedy of seeking heavy damages against the parties of the second part to the said contract, Exhibit "C," by filing in this Honorable Court the aforesaid complaint against the said parties of the second part to said contract, plaintiff's Exhibit "C," wherein and whereby he set forth the identical matters and things set forth in paragraphs four (IV) to seven (VII) inclusive, of his complaint herein, the substance of which al-

legations is that the defendants had agreed to convey to him sixty-two (62) per cent of the stock of said Nevada Humboldt Tungsten Mines Company and other stock in consideration of the [945] performance of certain services to be rendered by him, and that he had proceeded to render the agreed services; but that while rendering said services he had discovered that the defendants in said action had falsely and fraudulently represented the value of said property; and that he and his associates had thereupon declined to furnish the money called for by Plaintiff's Exhibit "C"; that the Nevada Humboldt Tungsten Mines Company was and is insolvent and its stock valueless; and in lieu of said stock he asked damages to the amount of One Hundred Five Thousand Dollars (\$105,000), which sum he alleged would have represented the value of sixty-two (62) per cent of stock according to his estimate of the value thereof if the alleged representations made to him had been true.

That the fact that plaintiff had made said election was known to this defendant prior to the payment by this defendant of any part of the purchase price of said properties.

3. This defendant further alleges that the said act of the plaintiff, Taylor, in filing the said complaint was done with full knowledge of his, said Taylor's, rights and of all of the facts, and that his election to insist upon the said remedy of damages involved a negation and repudiation of the remedy which he seeks in this action.

4. This defendant, W. J. Loring, further avers

that the meeting of stockholders of said Nevada Humboldt Tungsten Mines Company called for April 27th, 1920, in deference to the restraining order of this Court has been adjourned to meet again on the 14th day of May, 1920; That it is just and equitable that the said meeting of stockholders should proceed to act favorably upon the matters and things for which it has been called and to authorize and direct the execution of additional deeds or bills of sale by way of further assurance of the [946] title of this defendant. And in that behalf this defendant avers that the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company were on the 16th day of August, 1919, indebted in a sum in excess of Two Hundred Thousand Dollars (\$200,000) and that they were unable to meet their obligations and that on the said day the plaintiff, Taylor, had made oath and had represented to this Court that the said Nevada Humboldt Tungsten Mines Company was insolvent and in substance had stated on oath that its stock was without any value whatever. That under the said conditions the Board of Directors of said corporation duly authorized and caused said corporation to enter into a contract for the transfer of certain of its properties, real and personal, to this defendant, Loring, as more fully appears by the said contract, Exhibit 1, hereunto annexed. That although the sale and transfer, so authorized to be made to this defendant, embraced by far the greater portion of the property and assets of said corporation, nevertheless it is the fact that it did not

embrace all of the property, but excepted and excluded from said transactions property belonging to the Nevada Humboldt Tungsten Mines Company of the value of several hundred dollars.

5. That the said sale to this defendant was absolutely necessary in order to pay the debts and obligations of said corporation and to save the said Nevada Humboldt Tungsten Mines Company from bankruptcy and financial ruin. That the price agreed upon was at least the full value of said properties embraced therein and was a sum which was more than One Hundred Seventy Five Thousand Dollars (\$175,000) in excess of the amount which the plaintiff, Taylor, stated on oath on said day was the value of said properties. [947]

6. That, as this defendant is advised and verily believes, the circumstances under which the said sale and transfer to this defendant was made were such that the said sale did not require any ratification by the stockholders of Nevada Humboldt Tungsten Mines Company, and that said transaction is wholly unaffected by Section 96 of the General Corporation Laws of Nevada of 1903 as amended in 1913, referred to in plaintiff's complaint, wherein it is provided that a corporation may sell and dispose of all of its property and assets when authorized by sixty (60) per cent of its stockholders at a meeting called upon fifteen days' notice. That nevertheless the said transaction was assented to, ratified and approved in the manner hereinabove set forth by stockholders of said corporation representing nine hundred forty-



one thousand eight hundred (941,800) shares out of a total of one million (1,000,000) shares of capital stock of said corporation. And this defendant avers that stockholders of said corporation owning and holding more than ninety-nine (99) per cent of all of the shares of capital stock of said corporation are ready, anxious and willing now at the said adjourned meeting (which has been called upon fifteen days' notice) to further authorize, sanction, ratify and approve the said transaction with this defendant and to authorize and direct the execution and delivery of such further deeds and bills of sale as may be proper by way of further assurance.

7. That, as this defendant is advised, it is not necessary or essential to the title of this defendant that such meeting be held or such authorization or ratification had; but nevertheless this defendant avers that it is proper and desirable that the said meeting be held and that the execution of further assurances to this defendant be at such meeting authorized and sanctioned, forasmuch as it is the fact [948] that the said David Taylor, who holds five thousand (5,000) shares upon the books of the Nevada Humboldt Tungsten Mines Company, has questioned and is questioning the validity of the bill of sale and deeds received by this defendant from the said Nevada Humboldt Tungsten Mines Company upon the technical ground that the said transaction was not authorized at a meeting held upon fifteen days' notice and said contention tends to cloud the title to said land and to injure this defendant.

## IV.

This defendant further alleges:

1. That the plaintiff, Taylor, has been guilty of gross laches in the matter of filing his complaint in this action. And in that behalf this defendant avers that well knowing that on the 16th day of August, 1919, the said Nevada Humboldt Tungsten Mines Company entered into a contract with this defendant, a copy of which is hereunto annexed, marked Exhibit 1, and well knowing that the said contract and the mortgage given pursuant thereto called for payments of money at stated times under penalty of forfeiture by this defendant, and well knowing that the outstanding liabilities and obligations of said Nevada Humboldt Tungsten Mines Company were such that the moneys called for by said contract to the extent of at least Two Hundred Thousand Dollars (\$200,000) would be required and would be immediately used when and as paid in by this defendant in discharge of obligations of said corporation and of said Tungsten Products Company, its subsidiary corporation, nevertheless said plaintiff willfully and deliberately stood by and willfully failed and neglected and refrained from beginning said suit until a total sum of Two Hundred Thirty-three Thousand Three Hundred Thirty-three and 33/100 Dollars (\$233,333.33) had [949] been paid under the said contract and until he well knew that debts exceeding Two Hundred Thousand Dollars (\$200,000) of said Nevada Humboldt Tungsten Mines Company and its said subsidiary corporation, Tungsten Products

Company, had been paid out of moneys so paid in by this defendant.

2. That in equity and good conscience plaintiff is estopped and debarred by his laches and conduct aforesaid from maintaining this action or from obtaining any relief thereunder, and particularly, from obtaining any injunction under the order to show cause herein which will prevent said Nevada Humboldt Tungsten Mines Company from giving to this defendant further assurances of the title to the real and personal property pursuant to the said agreement, Exhibit 1.

V.

This defendant avers that said bill is wholly without equity, and moves that the same be dismissed for want of equity.

WHEREFORE, this defendant prays that the said order to show cause be denied; that the temporary restraining order heretofore issued herein be discharged and set aside; and that this defendant have such further relief as is meet and conformable to equity.

JOHN F. DAVIS.

CHARLES S. WHEELER and

CHARLES S. WHEELER, Jr.

Solicitors for Defendant, W. J. Loring.

BOOTH B. GOODMAN,

Of Counsel. [950]

State of California,

City and County of San Francisco,—ss.

W. J. Loring, being first duly sworn, deposes and says: That he is one of the defendants in the above-

entitled action; that he has read the foregoing "Response of W. J. Loring to Order to Show Cause" and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and that as to those matters, he believes it to be true.

W. J. LORING.

Subscribed and sworn to before me this 13th day of May, 1920.

[Seal]

JOHN McCALLAN,  
Notary Public in and for the City and County of  
San Francisco, State of California. [951]

**Exhibit No. 1.**

THIS CONTRACT, made and entered into this sixteenth day of August, one thousand nine hundred and nineteen, by and between Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and Tungsten Products Company, also a Nevada Corporation, the parties of the first part, and W. J. Loring, of the City and County of San Francisco, State of California, the party of the second part,

**WITNESSETH:**

That the parties of the first part, for and in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States, to them paid by the party of the second part, the receipt whereof is hereby admitted, and in consideration of the moneys to be paid by the party of the second part



at the times and in the manner hereinafter provided, do by these presents covenant and agree with the party of the second part to sell, assign, grant, convey and set over unto the said party of the second part, and his heirs and assigns, and the party of the second part hereby agrees to buy all of the real and personal property now owned by the parties of the first part, including all rights, easements, contracts for power, capital stock of other corporations owned by the parties of the first part, or by either of them, and in brief every article of real, personal or mixed property, of every kind and description, now owned by the parties of the first part, or either of them (excepting only the books and corporate records of the parties of the first part), and expressly including the following real and personal property, to wit:

#### REAL PROPERTY.

All those certain mining claims and mineral bearing lodes, veins and deposits situated in an unknown mining district, [952] in the County of Pershing, formerly County of Humboldt, State of Nevada, described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made,

being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence west, along the South line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys; together with all the rights, privileges and appurtenances thereunto belonging or in any wise [953] appertaining. Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed, dated April 25, 1918, recorded in Book 53, page 76, of Deeds, rec-

ords of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying, situate and being in the County of Pershing (formerly County of Humboldt, State of Nevada, more particularly described as follows:

Beginning at the Southeast corner of Section Twenty-seven (27), Township Thity-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one Hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east one hundred (100) feet; to the place of beginning. Being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said records reference is hereby expressly made; together with the mill, plant, improvements, tenements, and hereditaments thereon and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or over the northeast quarter of Section Thirty-five (35), Township Thirty-four (34) North, Range Thirty-four (34)

East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or [954] therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

#### PERSONAL PROPERTY.

And also, all of the personal property of every kind and description owned by the parties of the first part and each of them, including all of the issued capital stock of the Mill City Development Company owned by said parties of the first part, or either of them, with the Certificates representing the same properly endorsed in blank, and all ore in demps, at the mill or in the mine; all buildings erected upon any of the lands hereinbefore described; all tungsten concentrates including all concentrates in the mill or elsewhere owned by either of the parties of the first part and all concentrates in the possession of the party of the second part, the Pacific Tungsten Company, or Wells Fargo Nevada National Bank of San Francisco, and including all moneys due upon concentrates heretofore sold by either of the parties of the first part to the Western Ore Purchasing Company of Reno, Nevada; all mills, machinery, concentrating tables, engines, compressors, motors, belting, cables, hoists and every other article of machinery or equipment which is now situated on the property of the par-



ties of the first part or either of them above described, or in the concentrating mill thereon, or elsewhere; all mine cars, track, buckets, skips, drilling steel, jackhammers, stoping or drilling machinery of every kind and description and all of the tools and implements used in or about the mine and mill owned by the parties of the first part, or either of them, including all picks, shovels, blacksmith tools and equipment, carpenters and millwrights' tools; all wagons and [955] trucks; all mine and mill supplies of every kind, wheresoever situated, including powder; all boarding-house and bunk-house furnishings and equipment; and in brief every article of personal property including credits owned by the parties of the first part, or either of them, excepting only their books, corporate seal, and records, and except any item of cash in bank above the amount of \$195.46, and except supplies now at Mill City amounting to \$1106.25 (being the following items: Baker, Hamilton & Pacific Co., \$3.27, \$25.78, and \$19.10; The Gallagher Machinery Co., \$120.00; The Giant Powder Co., \$813.40; Allis-Chalmers Mfg. Co., \$353.60, and the Stearns-Roger Co., \$71.10).

The parties of the first part also agree to sell, assign, transfer and set over unto the said party of the second part, and his assigns, all of their right, title, interest, claim or demand in, to, or of any and all moneys which may hereafter be found to be due to them, or to either of them, from the Government of the United States by reason of any claim for relief which they, or either of them, have filed

or presented under that certain act of Congress of the United States known as the War Minerals Relief Act.

The said party of the second part hereby covenants and agrees to pay or cause to be paid to the parties of the first part as the full purchase price of the entire properties of the parties of the first part as above described, including said right to moneys by reason of said War Minerals Relief Act, the sum of Three Hundred Thirty-three Thousand Three Hundred Thirty-three and Thirty-three One-Hundredths (\$333,333.33) Dollars, in lawful money of the United States at the times and in the manner following:

The sum of Fifty Thousand (\$50,000.00) Dollars on or before September 1st, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars [956] on or before the first day of October, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the fifteenth day of November, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the twenty-seventh day of December, 1919;

The further sum of *Thirty Thousand* Three Hundred Thirty-three Dollars and Thirty-three cents (\$33,333.33) on or before the 4th day of February, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of May, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of August, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of November, 1920; and

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of February, 1921.

All payments of the installments of the purchase price above set forth shall be made in cash, or by certified check, or by cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its cashier, J. T. Goodin, who is trustee for the Creditors of said parties of the first part, who shall, first pay off the loan of Ten Thousand (\$10,000.00) Dollars procured to pay off labor claims, and shall thereafter pay out said installments so received to said respective creditors in accordance with his trust, but the payment thereof by said party of the second part to said Cashier and Trustee, or his successor as such, shall be a complete performance by said party of the second part of the payment of each installment so paid, and said party of the second part shall not be obligated to ascertain [957] whether said payments by said Cashier or Trustee shall have been properly distributed.

IT IS FURTHER UNDERSTOOD AND AGREED that the said party of the second part shall receive credit upon the installment of the pur-

chase price falling due on the first day of September, 1919, for the sum of Thirteen Thousand One Hundred Fifty-eight and Fifty-two one-hundredths (\$13,158.52) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company assigned by Rochester Mines Company, a Nevada Corporation, to the party of the second part, and also for the sum of Four Thousand Two Hundred Eleven and Sixty-two One-hundredths (\$4,211.62) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company, assigned by Rochester Combined Mines Company, a Nevada corporation, to the party of the second part; said claims or accounts now being the property of the party of the second part and due and owing to him.

IT IS EXPRESSLY COVENANTED AND AGREED that the party of the second part shall, upon the execution of this contract, have immediate possession of the properties above described, and all thereof and the right to conduct and operate said properties, and extract, ship, reduce and sell ore and concentrate therefrom, and shall apply the net proceeds of any concentrates derived from such operation by the party of the second part, first, to the payment of the debts of the corporation herein set forth, obtaining credit therefor upon the installments of the purchase price in the manner herein set forth, and thereafter shall have the right to apply such net proceeds upon said installments of the purchase price as may then remain.



IT IS FURTHER AGREED that the party of the second part, or his assigns, shall have the right to collect all of the accounts and bills receivable, due to said parties of the first part, [958] or either of them, and to sell any of the tungsten concentrates covered by this agreement and any tungsten concentrates produced through the operation by him of any of said properties, and shall apply any moneys collected thereunder, whether out of account due said parties of the first part, or either of them, or collected from bills receivable, due, or otherwise, and all moneys derived from the net proceeds of concentrates so sold shall be paid over and apply upon the purchase price of said properties and in payment of the installments as the same become due and said party of the second part shall receive credit therefor upon the next installment falling due after the payment thereof.

In case of any default in the payment of any of said installments of the purchase price when due, then, at the option of said parties of the first part, this agreement shall terminate and be of no further force and effect, and said parties of the first part shall not be obligated to do anything further thereunder, and they shall be entitled to retake possession of said real property, together with any personal property thereon, and to retain any payments hereunder theretofore made as full and liquidated damages for the failure of the party of the second part to complete this agreement, and for rentals for the use and occupation thereof, and for damages caused by the extraction of ore therefrom and its

change of appearance resulting therefrom and otherwise, but the option set forth in this paragraph shall not be deemed to abridge any right to which the parties of the first part may be entitled under the provisions of this agreement.

The parties of the first part further covenant that within seven days from the date of this contract they will make [959] and execute and deliver to the party of the second part or his assigns, good and sufficient deeds conveying all of the real property owned by the parties of the first part and each of them, and will also make, execute and deliver good and sufficient bills of sale conveying all of the personal property owned by the parties of the first part and each of them, and also good and sufficient assignments of the various contract, franchises, rights or easements and capital stock of other corporations which the parties of the first part or either of them may own. Simultaneously with the delivery of said deeds to the party of the second part, by the parties of the first part, the party of the second part shall make, execute and deliver to the order of said parties of the first part, a properly executed mortgage containing the usual covenants covering the real property described in the deeds from each of said parties of the first part to the party of the second part, securing to said parties of the first part the payment of the installments of the purchase price of all of the properties at the dates and in the place set forth in this agreement. Said mortgage shall also contain a clause

covering the liquidation of creditor's claims as herein set forth.

Time shall be of the essence of this agreement but there shall be a five days' grace allowed on the date set for the payment of each installment before the party of the second part shall be considered to be in default thereon.

It is further stipulated and agreed that this contract shall run in favor of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties; and it is further agreed that the party of the second part shall have the right and power to assign this contract.

IN WITNESS WHEREOF the said Nevada Humboldt Tungsten [960] Mines Company has by resolution of its Board of Directors caused its corporate name to be hereto subscribed by its President and Secretary and its corporate seal to be hereto affixed and said Tungsten Products Company has also, by resolution of its Board of Directors, duly adopted, caused its corporate name to be hereto subscribed by its President and Secretary and its corporate seal to be hereto affixed, and the party of the second part has hereunto set his hand, in duplicate, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY,

By L. A. FRIEDMAN,  
President.

[Corporate Seal]

Attest: R. NENZEL,  
Secretary.

## TUNGSTEN PRODUCTS COMPANY,

By L. A. FRIEDMAN,

President.

[Corporate Seal]

Attest: R. NENZEL,

Secretary.

W. J. LORING.

I hereby approve the foregoing contract on behalf of the Creditors of the parties of the first part and consent to the same.

J. T. GOODIN,

Trustee for Creditors. [961]

**Exhibit No. 2.**

## KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Nevada Humboldt Tungsten Mines Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Nevada Humboldt Tungsten Mines Company.

IN WITNESS WHEREOF, we have hereunto set our hands this sixteenth day of August, A. D. 1919.



L. A. Friedman .....owning 91,640 shares  
Lena J. Friedman.....owning 250,000 shares  
R. Nenzel .....owning 102,000 shares  
G. K. Hinch.....owning 10,000 shares  
H. J. Murrish.....owning 101,000 shares  
C. H. Jones .....owning 100,000 shares  
John G. Huntington.....owning 50,000 shares

By R. Nenzel, Atty in Fact.

Frank Carlstrom.....owning 60,000 shares  
C. W. Poole.....owning 219,160 shares  
V. A. Twigg.....owning 3,000 shares  
J. T. Goodin.....owning 5,000 shares

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of the Nevada Humboldt Tungsten Mines Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date, and are each the owners of the number of shares set opposite their respective names. [962]

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Nevada Humboldt Tungsten Mines Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

[Corporate Seal]

R. NENZEL,  
Secretary of Nevada Humboldt Tungsten Mines  
Company, a Nevada Corporation. [963]

**Exhibit No. 3.****KNOW ALL MEN BY THESE PRESENTS:**

That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Tungsten Products Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Tungsten Products Company.

IN WITNESS WHEREOF, we have hereunto set our hands this, the sixteenth day of August, A. D., 1919.

L. A. Friedman.....	owning	1,000 shares
L. A. Friedman, Trustee....	owning	94,680 shares
H. J. Murrish.....	owning	1,000 shares
R. Nenzel .....	owning	1,000 shares
C. H. Jones.....	owning	1,000 shares
John G. Huntington.....	owning	1,000 shares

R. Nenzel, Atty. in Fact.

I, R. Nenzel, Secretary of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of Tungsten Products Company are

the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Tungsten products Company this 16th day of August, 1919, and affixed hereunto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Tungsten Products Company, a Nevada Corporation. [964]

**Exhibit No. 4.**

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company, passed and adopted at Special Meeting of Stockholders held on August 23d, 1919.)

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation, a certain contract and agreement made between this Company and Tungsten Products Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California on the other part, which contract provided for the sale of this Company's property to said W. J. Loring, jointly with the property of the Tungsten Products Company, for a consideration of \$333,333.33 be, and the same is hereby

ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this Company.  
[965]

(Resolution of Stockholders of Nevada Humboldt  
Tungsten Mines Company Continued.)

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Tungsten Products Company to purchase the real and personal property of this corporation and the real and personal property of said Tungsten Products Company for the sum of \$333,333.33, and

WHEREAS, the Board of Directors of this Company, have by Resolution, recommended that this Company accept the said offer and sell to W. J. Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board or Directors of this Company, held on the 16th day of August, 1919, and



WHEREAS, this Company and said Tungsten Products Company, which is a subsidiary corporation to this Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company, and its creditors, to accept the offer of said Loring, and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already, in writing, ratified and approved the said contract and the proposed sale of this Company's property, and

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the Company and threatened law suits and other matters which tend to harass the company and make a sale of its property at a higher figure impossible, is a reasonable one. [966]

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds and Bills of Sale to all of the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation. [967]

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company—Continued.)

RESOLVED, that the action of L. A. Friedman, as Trustee for the stockholders of this corporation in voting 94,680 shares of the capital stock of the Tungsten Products Company in favor of the sale of the property of said Tungsten Products Company to W. J. Loring at a meeting of the stockholders of said Tungsten Products Company, held August 16th, 1919, be, and the same is hereby ratified, approved and confirmed and,

FURTHER RESOLVED, that the stockholders of this corporation do hereby adopt the said act of said L. A. Friedman, Trustee, as their own act and deed. [968]

(Resolution of Stockholders of Tungsten Products Company, passed and adopted at Special Meeting held on the 16th day of August, 1919.)

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation a certain contract and agreement made between this Company and Nevada Humboldt Tungsten Mines Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California, on the other part, which contract provided for the sale

of this company's property to said W. J. Loring, jointly with the property of the Nevada Humboldt Tungsten Mines Company, for a consideration of \$333,333.33, be, and the same is hereby ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this Company. [969]

(Resolution of Stockholders of Tungsten Products Company—Continued.)

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Nevada Humboldt Tungsten Mines Company to purchase the real and personal property of this corporation and the real and personal property of said Nevada Humboldt Tungsten Mines Company for the sum of \$333,-333.33 and,

WHEREAS, the Board of Directors of this Company, have, by Resolution, recommended that this Company accept the said offer and sell to W. J.

Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Nevada Humboldt Tungsten Mines Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company, and its creditors, to accept the offer of said Loring and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already in writing ratified and approved the said contract and the proposed sale of this Company's property, and,

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the Company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one. [970]

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds and Bills of Sale to all of the properties of this



Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation.  
[971]

**Exhibit No. 5.**

**MORTGAGE TO SECURE PURCHASE PRICE.**

THIS INDENTURE, made and entered into the 23d day of August, in the year of our Lord One Thousand Nine Hundred and Nineteen, by and between W. J. LORING, of The City and County of San Francisco, State of California, the party of the first part, and NEVADA TUNGSTEN MINES COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and TUNGSTEN PRODUCTS COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Nevada, the parties of the second part,

**WITNESSETH:**

WHEREAS, the party of the first part has this day bought from the parties of the second part, and the parties of the second part have this day

sold to the party of the first part, and to his heirs and assigns forever, all the property hereinafter described, together with other property, for the sum of Three Hundred and Thirty-three Thousand Three Hundred and Thirty-three and 33/100 Dollars (\$333,333.33), in lawful money of the United States, which said sum of money said party of the first part has obligated himself to pay to the parties of the second part, in accordance with the provision of that certain contract in writing, dated the 16th day of August, 1919, between the parties of the second part herein as parties of the first part therein, and the party of the first part herein as the party of the second part therein, in installments, at the times, and in the manner, and in accordance with the provisions of said contract in writing of August 16th, 1919.

NOW, THEREFORE, in consideration of the premises, and in consideration of the sum of One Dollar in hand paid to the party of the first part herein by the parties of the second part herein, the receipt whereof by the party of the [972] first part herein from the parties of the second part herein is hereby acknowledged, and for other good and valuable considerations him hereunto moving, the party of the first part herein does by these presents grant, bargain, sell and convey unto the parties of the second part herein, and to their successors and assigns forever, all those certain pieces or parcels of land situated in the County of Pershing, formerly the County of Humboldt, of Nevada, more particularly described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the offices of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purpose of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty-seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence West, along the South line of said Section, to the South quarter corner thereof; thence

northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys, together with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed dated April 25, 1918, recorded in Book 53, page 76, of Deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying, situate and being in the County of Pershing (formerly County of Humboldt), State of Nevada, more particularly described as follows:

Beginning at the Southwest corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one Hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east [973] one hundred (100) feet, to the place of beginning, being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record reference is hereby expressly made, together with the mill, plant, improvements, tenements, and hereditaments thereon, and all the rights, privileges, easements and fran-



chises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed;

Also that certain easement for the flow of tailings from the mill, or any other plant or structure on, or that may be constructed on, said last above-described tract flowing on or over the northeast quarter of Section Thirty-five (35) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

Together with all mills, buildings, improvements and equipment erected upon or in any of the land hereinbefore described; and including all property thereon or therein which constitutes real property under the provisions of the laws of the State of Nevada in such case made and provided.

This conveyance is intended as a mortgage, to secure the payment of Three Hundred Thirty-three Thousand, Three Hundred and Thirty-three and 33/100 (\$333,333.33) Dollars, in lawful money of the United States, as the purchase price of said and other property, upon the following installments and at the following times, to wit:

\$50,000 thereof on or before the 1st day of  
September, 1919.

\$50,000 thereof on or before the 1st day of October, 1919.

\$50,000 thereof on or before the 15th day of November, 1919.

\$50,000 thereof on or before the 28th day of December, 1919.

\$33,333.33 thereof on or before the 4th day of February, 1920.

\$25,000.00 thereof on or before the 4th day of May, 1920.

\$25,000.00 thereof on or before the 4th day of August, 1920.

\$25,000.00 thereof on or before the 4th day of November, 1920, and

\$25,000.00 thereof on or before the 4th day of February, 1921.

—all of said payments of installments of said purchase price to be made in cash, or by certified check, or by Cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its Cashier, J. T. Goodin, who is trustee for certain creditors of said parties of the second part herein, who shall, first, pay off the loan of \$10,000 procured by him to pay off labor claims, and shall thereafter pay out said installments so received to the respective creditors [974] represented by him in accordance with his trust, but the payment thereof by said party of the first part herein to said Cashier and Trustee, or to his successors as such, shall be a complete performance by said party of the first part herein of the pay-

ment of each installment so paid, and said party of the first part herein shall not be obligated to ascertain whether said payments of said Cashier or Trustee have been properly distributed; according to the conditions of that certain written contract dated the 16th day of August, 1919, above mentioned, and these presents shall be void, if such payments be made according to the tenor and effect thereof.

It is hereby understood and agreed, that the party of the first part shall, while this mortgage continues in force and effect and until the debt secured thereby shall be discharged, cause to be performed upon each of the unpatented mining claims in the property above described, the annual assessment work necessary to protect the same under the provisions of the Statutes of the United States and of the State of Nevada in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that the party of the first part herein shall have the right to conduct and operate said property, during the existence of this mortgage and until the debt secured thereby shall have been extinguished, to extract, ship, reduce and sell ore and concentrates therefrom, and shall apply the net proceeds of any concentrates derived from said operations, by him first, to the payment of the debt of the parties of the second part herein as set forth in the said written contract of August 16th, 1919, obtaining credit therefor upon the installment of the purchase price in the manner

therein set forth, and thereafter shall have the right to apply such net proceeds upon said installment of the purchase price as will then remain, and shall have the right of necessary repair, renewal and replacement of machinery, tools, and equipment while so doing with machinery, tools and equipment of equal [975] make and value, but all work and operations conducted by him upon or in said property or any part thereof shall be performed and done in a good and miner-like manner: and neither said parties of the second part, nor said property, nor any of them, shall be liable for the cost or expense of operating or conducting mining, milling, or reduction works on or in said property, or for labor employed thereon or therein or material furnished thereon or therein, at the instance or request of said party of the first part herein or of his heirs, administrators, or assigns, but said party of the first part herein, his heirs, administrators and assigns shall be responsible for such costs and expenses;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein will cause to be recorded in the proper recording office and posted in the proper places upon said property any notices requested by the parties of the second part herein, that may be necessary to protect said property from liens under the provisions of the Statute in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that party of the first part herein will pay, or cause to be paid, all taxes that may be



levied upon said property by national, state, county, or district authority, during the continuance of this mortgage, and until the debt secured thereby shall have been extinguished;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein shall cause the buildings upon said property to be insured against fire in reputable fire insurance companies authorized and doing business under the provisions of the laws of the United States and of the State of Nevada, and having the right to operate in said State of Nevada, in a sum of not less than \$82,950.00, and shall apportion said amount of insurance upon said property as follows: mill buildings, not less than \$35,000; mill machinery, not less than \$40,000; superintendent's residence, [976] not less than \$1,000; boarding-house and fittings, not less than \$800; twelve cottages now upon said property, not less than \$1,800; compressor's building, not less than \$400; compressor's machinery, not less than \$1,500; gallows-frame on S. P. ground, not less than \$300; hoist-building at S. P. shaft, not less than \$100; hoist engine at S. P. Shaft, not less than \$500; gallows-frame, Carlson, not less than \$500; blacksmith's shop, not less than \$300; office and warehouse not less than \$750.

It is understood and agreed, that, in case said party of the first part herein shall fail or neglect to pay any of said taxes when due, or fail or neglect to cause to be performed any of said annual assessment work required by the provisions of the Statutes of the United States or the State of Ne-

vada, when necessary, the parties of the second part herein, or either of them, shall have the right, at their option, to pay said taxes, or fire insurance premiums upon the above insurance, or to cause said assessment work to be performed and to advance the money necessary therefor, and these presents shall constitute a security to them for the repayment of any such advances, as well as for the payments of the installments of the purchase price of said property hereinbefore set forth.

IT IS UNDERSTOOD AND AGREED, that if any installment of the purchase price hereinbefore set forth shall not be punctually paid when the same shall become due and payable, and for five days thereafter as in said written contract of August 16th, 1919, and in this mortgage mentioned, then and in such case the whole of the balance of said purchase price then remaining unpaid shall be taken to be wholly due and payable, at the option of said parties of the second part herein, or of either of them, and proceedings may forthwith be had by said parties of the second part, their successors and assigns, for the recovery of the same, either by suit on said contract of August 16th, 1919, or on this mortgage, anything in said contract or in this [977] indenture contained to the contrary thereof notwithstanding. And in any suit or other proceedings that may be had for the recovery of said balance of said purchase price, on either said contract or this mortgage, it shall and may be lawful for said parties of the second part herein, their successors or assigns, to include in the

judgment that may be recovered, such reasonable counsel fees and charges of attorneys and counsel employed in such foreclosure suit as shall be fixed by the Court having jurisdiction of such foreclosure suit, as well as all payments that the parties of the second part herein, or either of them, or their successors or assigns, may make for their security, or for the security of either of them, on account of taxes or moneys expended for the payment of fire insurance premiums, or for annual assessment work upon said premises, as hereinbefore mentioned.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year herein first above written.

W. J. LORING.

Duly acknowledged before Booth B. Goodman,  
Notary Public, Aug. 23, 1919.

[Endorsed]: No. B-7. In the District Court of the United States, for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, etc., et al., Defendants. Response of W. J. Loring to Order to Show Cause. Filed May 15th, 1920. T. J. Edwards, Clerk. John F. Davis, Charles S. Wheeler and Charles S. Wheeler, Jr., Attorneys for Deft. Loring. Nevada Bank Building, San Francisco. [978]

In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J.  
C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Separate Answer of Nevada Humboldt Tungsten  
Mines Company et al.**

Now come the defendants, Nevada Humboldt  
Tungsten Mines Company, Tungsten Products  
Company, Mill City Development Company, C. W.  
Poole, R. Nenzel, H. J. Murrish, L. A. Friedman,  
C. H. Jones, G. K. Hinch, J. T. Goodin, V. A.  
Twigg, J. C. Huntington, and Lena J. Friedman, in  
the above-entitled action and for their separate  
answer to plaintiff's complaint on file herein admit,  
deny and allege as follows, to wit:

**I.**

These defendants admit the allegations contained  
in paragraph numbered I of plaintiff's com-



plaint, except as to the citizenship and residence of plaintiff, and of defendant, W. J. Loring, and as to them, said defendants have not sufficient knowledge or information upon which to base a belief. [979]

## II.

These defendants have not sufficient knowledge or information as to the matters alleged in paragraph II of said complaint upon which to base a belief, except that these defendants admit the suit is not a collusive one.

## III.

These defendants admit the allegations of paragraph III of said complaint, but in this connection allege that the said contract Exhibit "A" expired by limitation on July 16th, 1919.

## IV.

These defendants admit the allegations of paragraph IV of said complaint, but in this connection allege that the said contract Exhibit "B" expired by limitation on June 16th, 1919.

## V.

Respecting the allegations of paragraph V of said complaint, these defendants admit that sometime shortly after the making and execution of the said contract of January 16, 1919, Exhibit "B" attached to plaintiff's complaint, one Howland Bancroft, a mining engineer, at the special instance and request of the plaintiff, made an examination of the mines, mining property and mining rights of the Nevada Humboldt Tungsten Mines Company, which said report was communicated to the

plaintiff, and that said report showed development which then existed upon said mining property of said Nevada Humboldt Tungsten Mines Company, and that said report showed that about nine thousand tons of scheelite ore, of an average of 1.75% tungstic acid had [980] been developed, placed in sight, blocked out, and made ready for mining in said mining property of said Nevada Humboldt Tungsten Mines Company. That as to whether said report showed the amount of development which then existed upon said mining property these defendants have not sufficient knowledge or information upon which to base a belief; admit that at all of the times mentioned in said complaint the defendants, Murrish, Nenzel, L. A. Friedman and Jones, were directors of the Nevada Humboldt Tungsten Mines Company, and the Tungsten Products Company; deny that defendant Poole had then, or at all times thereafter, or until the execution of the said conveyances by the defendant corporations to the defendant W. J. Loring, general charge of all mining or milling operations of said Nevada Humboldt Tungsten Mines Company, and its subsidiary, Tungsten Products Company; deny that the fact and truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company, or of the development work which had been performed or the new development work in progress on and within said mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company, were at all or any of the times mentioned in

the complaint peculiarly within the knowledge or information of any of the individual defendants, except Poole, Nenzel and L. A. Friedman, and admit that on or about the month of March, 1919 plaintiff informed the individual defendants that it was probable that the plaintiff would not be able to exercise his option to purchase said interests of said last named defendants in said corporations under said contract of January 16, Exhibit "B," and in this behalf these defendants aver that on or about the month of March, 1919, plaintiff informed said individual [981] defendants that he would not exercise his option to purchase said interests of said individual defendants in said corporations under said contract of January 16, 1919, Exhibit "B"; deny that thereupon in or about the month of March, 1919, or at any other time, or at all, the defendants, Poole, Murrish, Nenzel, and Friedman, or any of them acting for themselves, or for the defendants, Lena J. Friedman, Jones, Huntington, Goodin, Twigg, or Hinch, or any of them, with the intent to deceive plaintiff, or at all, or for the purpose of inducing plaintiff to execute or undertake the supplemental contract, Exhibit "C," falsely or fraudulently by means of telegrams or letters, or by any other means whatsoever, or at all, informed the plaintiff that further or new development work had been carried on within said mines, mining claims or mining rights of Nevada Humboldt Tungsten Mines Company which had developed, placed in sight, blocked out and made ready for mining, large or any quan-

tities of scheelite ore of commercial value, or any other value capable of being concentrated and the concentrates so returned were of great or any value; deny that thereafter, or on or about the 2d day of April, 1919, or at all, the defendants, Poole, Murrish or Nenzel, came to Denver, Colorado, for the purpose of inducing the plaintiff to make a supplemental contract for the disposition of their respective interests, or a part thereof, or for the purpose of inducing said plaintiff to make any contract relative to said property; deny that said plaintiff believed or relied upon the alleged or any representations of the defendants Poole, Murrish and Nenzel, or any of them, representing themselves or their [982] co-defendants, or any of them, in entering into the said supplemental contract with said defendants, and in this behalf, these defendants allege that at the special instance and request of said plaintiff and in consideration of his representations and statements to said individual defendants, that owing to the tungsten market being demoralized it seemed impossible for said plaintiff to carry out his part of said contracts, Exhibits "A" and "B," and for that reason it was improbable that he, the said plaintiff, would be able to exercise his option contained in said contract Exhibit "B," and that in consideration of said representations and in the belief and reliance upon the truth of the same, and at the instance and request of plaintiff, said individual defendants and said plaintiff entered into said supplemental contract of April 2, 1919, Exhibit "C"; that said



plaintiff, his agents, mining engineers and representatives, at all times, commencing at a time shortly prior to January 16, 1919, and up to on or about June 16, 1919, had access to all and singular the mines, mining claims and mining rights of the said Nevada Humboldt Tungsten Mines Company; that at the time said supplemental contract was entered into by said plaintiff on or about April 2, 1919, the said plaintiff had actual knowledge of all and singular what development work had been carried on and performed within the mines and mining claims and property of the said Nevada Humboldt Tungsten Mines Company; that at said time said plaintiff had actual knowledge of the quantity and concentrating value of what scheelite ores had been developed, placed in sight and blocked out, and the commercial value thereof; and [983] that said plaintiff continued to and did have actual knowledge, during the month of May, 1919, of all and singular the amount and character of said development work that had been carried on within said mines and mining claims and property of said company, and the amount of scheelite ore which had been developed, placed in sight and blocked out, and the commercial value thereof.

Further answering the allegations contained in said paragraph V these defendants deny that the defendants Poole, Murrish and Nenzel, or any of them, acting for themselves, or as the agents of and for the other defendants, or otherwise or at all, for the purpose of inducing the plaintiff to enter into said supplemental contract of April,

2, 1919, or for any other purpose or at all, then and there or at any time, falsely or fraudulently or with intent to deceive said plaintiff, or for any purpose whatsoever, represented to plaintiff that since the examination of the mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company, and the report thereof made by the said Howland Bancroft, mining engineer aforesaid, to said plaintiff, great or additional ore bodies of equal or any grade or quality had been developed, or that a large or any amount of new development work had been done or performed on said mines or that there was then on said April 2, 1919, or at any time thereabouts, or at all, blocked out, in sight or ready for mining or reduction into concentrates over sixty thousand tons, or any other amount, of scheelite ore which would carry an average of 1.75% tungstic acid, or that would carry any other value or quantity whatsoever, and in this behalf these defendants allege [984] that said plaintiff, his agents, mining engineer and representatives for the period of from shortly preceding the contract of January 16, 1919, up to and including on or about June 16, 1919, at all times had access to the mines, mining claims, and mining property of said Nevada Humboldt Tungsten Mines Company, and during said period and prior to the execution of the contract of April 2, 1919, Exhibit "C," plaintiff's mining engineer and representative, at the instance of plaintiff and on his behalf, visited said property and examined and inspected the same, and reported the result of such work to

plaintiff prior to the execution of said supplemental contract of April 2, 1919, Exhibit "C," and that at all times during said period between January 16, 1919 and April 2, 1919, and said plaintiff had full, complete and ample opportunity to see, appraise and understand all and singular, the conditions, amount of ore, quality and values thereof, and all material matters pertaining to the subject matter of said contract; these defendants deny that any representations made by said defendants or any of them to the plaintiff were false or untrue, and deny that any representation was at any time made by said defendants, or any of them, for the purpose of deceiving said plaintiff, or for the purpose of causing him to undertake or carry out the provisions of said supplemental contract of April 2, 1919, Exhibit "C," or at all, save as to the truth and fact of said subject matter; deny that in truth or in fact at said time, to wit: April 2, 1919, there was opened up and developed and in sight in said mine, not to exceed nineteen thousand tons of scheelite ore of an average value not to exceed 1.75% tungstic acid, and in this behalf these defendants [985] allege that at said time there was opened up and developed, and in sight in said mine quantities of scheelite ore greatly in excess of nineteen thousand tons of an average of 1.75% tungstic acid.

That said plaintiff is, and at all times herein mentioned was, and for many years prior has been, an ore dealer on a large and extensive scale, engaged in buying and selling and handling ores of the same

kind and character found in said mining property; and that plaintiff was fully, peculiarly and thoroughly experienced in said work and business, and able by inspection and examination to ascertain and determine the amount of ore in sight in said mining property, and the quality, character and approximate value thereof.

#### VI.

Respecting the allegations of paragraph VI of plaintiff's complaint these defendants deny that plaintiff relied upon or believed the alleged or any false or fraudulent representations of the defendants, so alleged to have been made on or about April 2, 1919, or at all; that respecting the remaining allegations in said paragraph VI defendants have not sufficient knowlege or information upon which to base a belief and therefore deny the same.

#### VII.

Respecting the allegations of paragraph VII of plaintiff's complaint, these defendants deny that plaintiff, relying upon said alleged or any representations, gave any time or efforts to said enterprise or the consummation of said contract during all or any of the time from April 2, 1919, to June 1, 1919, or at all; that as to the remaining allegations of said paragraph VI, these defendants have not sufficient knowledge or information upon which to base a belief, and therefore deny that as a result of the alleged, or any expenditures, time or efforts of the plaintiff, plaintiff succeeded, or had



pledged by himself or other persons associated with him, an amount sufficient to meet all or any obligations of his under the terms of said contract, or sufficient to entitle him to receive the 62%, or any other per cent or amount, of the capital stock of the [986] corporations mentioned in said paragraphed VII. In this behalf these defendants aver that all and singular the allegations, matters and things set forth in said paragraph VII, commencing with the word "that" in line 23, page 8, of said complaint, to and including the last word in said paragraph in line 2, page 9 of said complaint are sham, frivolous, immaterial, irrelevant and redundant, and these defendants ask that the said matter be disregarded in that it is a mere conclusion, self-serving statement, not a statement of any fact or facts, and is inconsistent with and contradictory of the conditions of said contract Exhibit "C," which by its terms requires a deposit of money to be made by plaintiff on or before June 16, 1919 in the Wells-Fargo Nevada National Bank in an amount sufficient to liquidate the indebtedness of said corporation defendants, and that the amount necessary to liquidate said indebtedness, at all times since April 2, 1919, to June 16, 1919, both inclusive, was not less than \$141,000.00, all of which was at all times well known to and understood by said plaintiff.

#### VIII.

Respecting the allegations of paragraph VIII of said complaint these defendants aver that all and singular the allegations, matters and things set

forth in said paragraph VIII are sham, frivolous, immaterial, irrelevant and redundant, and these defendants ask that the said matter be disregarded, in that it is inconsistent and contradictory with the terms of said Exhibit "C," for the reasons hereinbefore stated in paragraph VIII hereof, and for the further reason that commencing with the word "and" in line 9 of said paragraph VIII, page 9 of said complaint and [987] including the remainder of said paragraph, the same is not a plea of any probative fact, or facts, but is an attempt to plead evidence, which evidence is incompetent and immaterial for each and all of the reasons stated in paragraph VII hereof. Subject to the foregoing, defendants aver they have not sufficient knowledge or information respecting the allegations of said paragraph VIII of said complaint upon which to base a belief, and therefore deny the same, save that these defendants admit that on or about between the 18th and 25th days of May, 1919, plaintiff informed the defendants as named in said paragraph of the complaint, that he, the said plaintiff, was ready, willing and able to perform his obligations under said contract, Exhibit "C" but in this behalf these defendants aver that plaintiff was not then, or at any time, in truth and in fact either ready, able or willing to perform his said obligations under said contract, all of which was at all times well known to and understood by said plaintiff.

#### IX.

Respecting the allegations of paragraph IX of

said complaint, these defendants deny that on or about June 1, 1919, or at any time, plaintiff discovered the alleged or any falsity of the alleged or any representations of the defendants, or any of them; that as to all and singular the allegations, matters and things set forth in said paragraph IX commencing with the word "and" in line 22, page 9, of said complaint, including the remainder of said paragraph, these defendants aver the same is sham, frivolous, irrelevant, redundant and immaterial, and ask [988] that said matter may be disregarded in that it is inconsistent and contradictory with the terms of said Exhibit "C" for the reasons set forth in paragraphs VII and VIII thereof. Subject to the foregoing and as to the allegations of said paragraph IX commencing with the word "and" in line 22 of page 9 of said complaint, to and including the word Exhibit "C" in line 25 of said page, these defendants aver they have not sufficient knowledge or information sufficient to form a belief; that if plaintiff ever had any associates and if it is true as alleged in his complaint, said associates withdrew from said undertaking and refused to go into the same and refused to advance any money whatsoever for it; these defendants allege, according to their information and belief that said associates withdrew and refused for the sole and only reason that plaintiff refused to allow such associates sufficient of said stock to give them control as desired by them.

## X.

Respecting the allegations of paragraph X of said complaint these defendants deny that at any time before the expiration of said contract of April 2, 1919, Exhibit "C," or on or about the 20th day of May, 1919, or at any date or time whatsoever, the plaintiff requested or demanded the said defendants, or any of them, that they so organize a new corporation or amend the articles of incorporation of the Nevada Humboldt Tungsten Mines Company to comply with the provisions of the contract of April 2, 1919, Exhibit "C"; deny that said defendants, or any of them, neglected or refused to comply with any demand or request of plaintiff relative to said subject matter; admit that these defendants at all times since June 16, 1919, the date when said contract expired by limitation, have continued and will continue to refuse to perform any of the terms or conditions of the said contract, Exhibit "C"; deny that such refusal constitutes any neglect on the part of these defendants, and in this behalf these defendants aver that since said June 16, 1919 defendants have not been and are not now under any obligations whatsoever to perform any of the terms of said contract; deny that plaintiff has performed each or every covenant or obligation or agreement in said contract to be by him kept or performed, [989] and in this behalf these defendants aver that said plaintiff neglected and refused to perform any of the terms and conditions of said contract to be by him kept



and performed, all as hereinafter more particularly set forth.

## XI.

Respecting the allegations of paragraph XI of plaintiff's complaint, these defendants aver that the bill referred to in said paragraph of plaintiff's complaint as reported out of committee recommends that a duty of nine dollars per unit be placed on tungsten ores for a period of three years and no longer; that as to each of the remainder of the allegations of said paragraph XI, these defendants have not sufficient knowledge or information upon which to base a belief, and therefore deny the same.

## XII.

Respecting the allegations of paragraph XII of said complaint, these defendants deny that on or about August 16, 1918 (sic) 1919, or at any time, or at all, the defendant Nevada Humboldt Tungsten Mines Company, or Tungsten Products Company entered into any contract with the defendant W. J. Loring for the sale of all of the assets of said corporation defendants. In this behalf these defendants aver that the franchises and business, books, corporate seals and records of said corporation defendants were excluded from said contract of August 16, 1919, and from the conveyances, bills of sale and assignments made pursuant thereto; deny that said meetings of stockholders were held without adequate or proper notice thereof to the stockholders [990] of said corporations, or either of them, or to the plaintiff, a

stockholder of the defendant Nevada Humboldt Tungsten Mines Company; deny that said meetings were held without the giving of notice as required by the laws of Nevada, or particularly, or otherwise, by Statutes of Nevada, 1913, page 65, and in this behalf these defendants aver that all and singular said business was regularly had, done and transacted at said meetings, which meetings were duly called, held and conducted in full compliance with law and the by-laws of said defendants Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, all as hereinafter more particularly set forth, and also that the total authorized issued and outstanding capital stock of the defendant Tungsten Products Company was present at said stockholders' meeting and voted thereat in favor of said contract; admit that plaintiff objected to said sale and contract, but aver that he did so as a stockholder of said Nevada Humboldt Tungsten Mines Company only and that said plaintiff never was and is not now a stockholder of the defendant Tungsten Products Company; deny that the contract or conveyances authorized and entered into by said corporation defendants with the said W. J. Loring were merely pretended contracts or conveyances and in this behalf aver that the actual transaction was in all respects duly had and made as is hereafter more particularly set forth; deny that thereupon, or at all, plaintiff commenced an action in this Court as a stockholder to set aside, cancel and rescind said contracts and conveyances made by said corpora-

tions to the defendant W. J. Loring, but in this behalf these [991] defendants aver that there-upon and on August 16, 1919 plaintiff as a stockholder of the defendant Nevada Humboldt Tungsten Mines Company only, commenced an action to set aside, cancel and rescind said contract and conveyances made by said Nevada Humboldt Tungsten Mines Company; deny that said contracts or conveyances were unlawfully made by said defendant corporations, or either of them; deny that said defendant W. J. Loring took said deeds or said contract for said property from said defendant corporations, or either of them, with full or any notice of any right or equities of said plaintiff, or that said W. J. Loring was duly or regularly informed thereof by plaintiff, or by any person whomsoever, before the said defendant W. J. Loring had in anywise performed any part or portion of said contracts and in this behalf these defendants aver that from and after June 16, 1919 plaintiff had no right or equities whatsoever in the premises, under contracts B and C, and since July 16, 1919 under said contract Exhibit "A."

### XIII.

Respecting the allegations of paragraph XIII of said complaint, these defendants deny that the alleged or any suit for the cancellation or rescission of said contract or conveyances to said W. J. Loring by said defendant corporations is now pending in this Court, but in this behalf these defendants aver that there is a suit by plaintiff as a stockholder of said defendant Nevada Humboldt Tung-

sten Mines Company only, for the cancellation and rescission of said contract and conveyances now pending in this Court, but that the defendants Tungsten Products Company and Mill City Development Company are not parties thereto; [992] deny that any meeting of stockholders has been called to further or in any manner authorize or ratify the sale of said property to the defendant W. J. Loring, or to authorize instruments of conveyance to said Loring by the defendants Tungsten Products Company or Mill City Development Company; deny that any meeting of stockholders of any of said corporation defendants has at any time been called to further or otherwise authorize or ratify the sale of said W. J. Loring of all property or assets of said corporation defendants or any of them, or to further or otherwise ratify said sale of any assets or property whatsoever of the defendants Tungsten Products Company or said Mill City Development Company; deny that the individual defendants will vote any stock whatsoever of said Tungsten Products Company, or of said Mill City Development Company at the alleged or any stockholders' meeting of said corporations; admit that at the meeting of stockholders of said Nevada Humboldt Tungsten Mines Company called for April 19, 1920, and postponed as hereinafter stated, said individual defendants if permitted by order of this Court will vote all their shares in said last-named corporation in favor of further authorizing and ratifying said sale to the said W. J. Loring, and that such shares include



the said 62% of the capital stock of said corporation claimed by plaintiff; deny that any of the stock in any of said corporations is rightfully or at all the property of plaintiff, save that plaintiff is the owner of record of 5000 shares and no more of the capital stock of said defendant Nevada Humboldt Tungsten Mines Company; deny that said individual defendants will vote their alleged or any shares of stock in favor of authorizing a [993] sale to said W. J. Loring of all the property of said corporations or any of them, and these defendants aver that said stock will be voted only to further ratify and confirm the sale by said defendant Nevada Humboldt Tungsten Mines Company of the particular property mentioned in said contract and no other; deny that by the doing of all or any of the acts alleged, great or irreparable, or any, damage or injury whatsoever will be done to plaintiff; deny that said individual defendants will vote said stock as alleged unless restrained by the order of this Honorable Court, but in this behalf said individual defendants aver that unless restrained said individual defendants will vote their said stock of said Nevada Humboldt Tungsten Mines Company for the further ratifying and assurance by said corporation to said W. J. Loring of the property described in said contract; deny that the effect of said sale as above stated will be to practically dissolve said corporations, or any of them, and in this behalf these defendants aver that said corporations have continued to maintain their corporate existence, books and records, and

that said Nevada Humboldt Tungsten Mines Company has not determined as to its future policy or whether or not it will employ all or some of the moneys to be received from said W. J. Loring in acquiring and operating other mining properties; deny that the alleged or any distribution to stockholders will be to the great or irreparable or any damage to plaintiff, or that it will greatly or otherwise depreciate the value of any stock to which said plaintiff is entitled under the terms of said contract, Exhibit "C"; deny that plaintiff is entitled to any stock under the terms of said [994] contract; deny that the sale, or sales, mentioned in said paragraph XIII is a pretended sale and these defendants aver that the same is in all respects duly and regularly made, had and done; deny that the said sale or sales is in violation of the laws of Nevada, or of the rights of plaintiff as a stockholder in said corporations, or any of them; deny that plaintiff is a stockholder in either the said Tungsten Products Company, or Mill City Development Company, or that he is a stockholder in said Nevada Humboldt Tungsten Mines Company, except as to 5000 shares and no more; deny that the defendant Loring will accept said alleged ratification except as to said defendant Nevada Humboldt Tungsten Mines Company, or that the alleged, or any deeds of conveyances or the alleged or any instruments of conveyance will cast a cloud upon the title of said defendant corporations, or any of them, of, in or to said mining property, or that the same will greatly, or otherwise. depreciate the

value of any shares of stock which plaintiff now owns or which plaintiff is entitled to receive under the terms of said contract, Exhibit "C"; deny that defendant Loring will enter in or upon said mining property or any part thereof, under or by virtue of any instruments or conveyances as will be authorized or executed at or by authority of said meeting called for April 19, 1920, or will extract any minerals therefrom, but in this behalf these defendants aver that on August 23, 1919, said defendant W. J. Loring entered upon and took possession of the property described in said contract, and ever since has had and does now hold possession thereof, under and by virtue of a deed of conveyance duly made, executed [995] and delivered on said August 23, 1919 to said defendant W. J. Loring by the said Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company; deny that said defendant Nevada Humboldt Tungsten Mines Company will at said, or, any, stockholders' meeting, permit the said individual defendants to vote any of plaintiff's shares of stock whatsoever, and deny that any shares of stock which are justly the property of the plaintiff will be voted by any of said defendants; deny that said 62% of the shares of any of said corporations are justly the property of plaintiff, or that plaintiff will suffer great or irreparable, or any, injury whatsoever in the premises.

#### XIV.

Respecting the allegations of paragraph XIV of said complaint, these defendants aver that the same,

and the whole thereof is sham, frivolous, irrelevant, redundant and immaterial and these defendants ask that said matter be disregarded in that plaintiff's alleged offer to perform is not performance; that plaintiff has no legal or equitable right attach as a condition precedent to performance by him, that the contract, Exhibit "C" be modified by defendants in the particulars alleged or in any particulars whatsoever; that said matter constitutes a vital and radical departure from the contract in respect to matters of substance. Subject to the foregoing, these defendants deny that on or about June 1, 1919, or at all, plaintiff duly, or otherwise, offered to perform each and every, or any covenant or obligation on his part to be performed under said contracts Exhibits "A," "B" and "C," or any of them, provided these defendants would agree to allow to plaintiff an abatement of certain terms thereof, as alleged or [996] otherwise, or at all. In this behalf these defendants aver that no abatement of terms were ever asked for by plaintiff as to the defendants Nevada Humboldt Tungsten Mines Company, or said Tungsten Products Company, and that defendant Mill City Development Company was not a party to any of said contracts; deny that these defendants, or any of them, made any false or fraudulent representations to said plaintiff, as alleged, or at all; deny that on or about June 1, 1919, plaintiff offered to advance, under the terms of said contracts, or any of them, the sum of \$85,000, or any sum, or amount whatsoever to be used for the purposes alleged, or for any pur-



pose; deny that in conformity with the provisions of said contract Exhibit "C" Plaintiff then, or at all, offered to advance additional money from time to time as alleged for the purpose of liquidating any balance due creditors from said defendant corporations, or for any purpose whatsoever.

XV.

Respecting the allegations of paragraph XV of said complaint these defendants deny that between January 16, 1919, and May 5, 1919, or between any other dates, or at all, plaintiff loaned or advanced to the defendant corporations the sum of \$78,000.00, or any sum or amount whatsoever. In this behalf these defendants allege that on divers dates between January 16, 1919, and April 30, 1919, pursuant to and in conformity with his obligations under said contract of January 16, 1919, Exhibit "A" the plaintiff loaned and advanced to the defendants Nevada Humboldt Tungsten Mines Company and Tungsten Products Company [997] the said sum of \$78,000.00; that the repayment of all and singular said loans and advances were fully secured by shipments of scheelite concentrates by said last-named defendant corporations to plaintiff, pursuant to said contract, and at the time of making and entering into said contract Exhibits "A" plaintiff expected to realize and receive a net profit of over \$18,000.00 as part of the consideration for his agreement to make said loans and advances, and that thereafter plaintiff received repayment in full of said \$78,000.00 from said last-named corporation defendants and these defendants aver, according to

their information and belief, that plaintiff also received and retained large and substantial secret profits from the proceeds of said business, the details or amount of which secret profits are unknown to these defendants.

### XVI.

Respecting the allegations of paragraph XVI of said complaint, these defendants deny that plaintiff has no plain, speedy or adequate remedy at law; deny the said contracts or conveyances heretofore executed and delivered to said W. J. Loring, and which it is the purpose of said Nevada Humboldt Tungsten Mines Company stockholders to ratify and confirm, will constitute a cloud upon the property or the title thereto of said Nevada Humboldt Tungsten Mines Company; deny that it will be necessary to commence various and sundry, or any, proceedings for the removal of the alleged or any cloud. [998]

### FURTHER ANSWER AND DEFENSE.

#### I.

Further answering said bill of complaint, and the matters and things set forth and complained of, these defendants allege that at all times since on or about February 17, 1917, and June, 1918, and July 1918, the defendants Nevada Humboldt Tungsten Mines Company, Tungsten Products Company and Mill City Development Company, respectively have been and now are corporations duly incorporated, organized and existing under and by virtue of the laws of the State of Nevada, with their principal offices and places of business at Lovelock, Pershing

(formerly Humboldt) County, Nevada; that said Nevada Humboldt Tungsten Mines Company was incorporated for the purpose of buying and selling mining property, working the same, and generally transacting, conducting and carrying on the business of dealing in mines and mining property; that said Tungsten Products Company was incorporated for the purpose, primarily, of operating mills for the reduction of ores, and generally to deal in mining property; and that said Mill City Development Company was incorporated for the purpose, primarily, of owning and operating water works and pipe-lines for carrying water in connection with mining operations; that thereupon said defendants entered upon said work and business; that said Nevada Humboldt Tungsten Mines Company subsequently acquired, among other things, the mining claims described in the first two paragraphs of the description of property in the contract with the said W. J. Loring, being marked Exhibit 1 hereto attached, and made a part hereof; that said Tungsten Products Company acquired, among other things [999] the property described in the third and fourth paragraphs of Exhibit 1; and said Mill City Development Company acquired certain water rights, and a pipe-line, and which was used in connection with the above-described property; that mining operations were thereupon commenced and carried on, and in consequence the said defendants, Nevada Humboldt Tungsten Mines Company, and Tungsten Products Company and Mill City Development Company became indebted to various per-

sons in a sum approximately from \$100,000.00 to \$120,000.00 on or about January 16, 1919; that in order to obtain money to discharge said indebtedness the defendants Nevada Humboldt Tungsten Mines Company and Tungsten Products Company entered into the agreement, Exhibit "A," and said individual defendants entered into the agreement Exhibit "B," both attached to plaintiff's complaint; that mining operations were thenceforth continued, and the net result of such continued operations was to increase said indebtedness to a sum of about \$220,000.00 on or about March 30, 1919, nearly all of which said indebtedness had been personally and legally guaranteed by the individual defendants herein named and for the payment of which they were jointly and severally personally liable, whereupon and for the purpose of enabling the said defendants, and particularly the defendant Nevada Humboldt Tungsten Mines Company, which owned all the stock (less nominal shares held by the directors) of the Tungsten Products Company, and also owned fifty per cent of the stock of the Mill City Development Company, to extricate itself and pay its said indebtedness, and the tungsten market having become demoralized, making it apparently impossible [1000] for plaintiff to carry out and perform his obligations under contracts Exhibit "A" and "B," the said plaintiff notified and informed these defendants of that fact, and that for that reason it was improbable that he would exercise his said option under the terms of said contract Exhibit "B," and said plaintiff, having had access



to said property and having then and there full knowledge of all and singular the amount of development in said property and of the quantity and quality of ores blocked out therein, thereupon and at the instance and request of plaintiff the said individual defendants entered into the contract Exhibit "C" attached to plaintiff's complaint; that upon the execution and delivery of said contract of April 2, 1919, Exhibit "C," to wit: on or about April 26, 1919, the said plaintiff personally visited, inspected and examined said property and the amount of development work thereon, and the quantity and quality of ores therein, and the ores blocked out, and ores mined, and that thereupon, and not before, plaintiff devoted some time to said business and made expenditures for the purposes of said work and business, the amount or value of which these defendants are unable to state.

## II.

That on or about June 1, 1919, said plaintiff informed the defendants that he could not carry out or perform the terms of said contracts Exhibits "A," "B" and "C" and demanded that defendants agree to execute a new contract as a complete substitute for said contracts "A," "B" and "C," which proposed new contract contained terms substantially and radically differing from the said terms of said contracts Exhibit "A," "B" and "C" and which proposed new [at last line this page "of said contracts Exhibits A, B & C," interlined before filing and word "demanded" interlined in line 24] [1001] conditions and terms were all to the sub-

stantial advantage of and favoring the plaintiff, and burdensome to these defendants, and these defendants then and there, on or about said June 1, 1919, refused to agree to or execute said new proposed contract, or any new contract, and that thereupon the said defendants at once commenced negotiations with their said creditors with a view of conveying all of said property to a trustee for the benefit of said creditors, and pursuant to such negotiations and on June 17, 1919, all and singular said property was, by a declaration of Trust, assigned to J. T. Goodin, as trustee for said creditors, and said creditors thereby granted a six months' extension of time for the payment of their several claims, and thereupon the said J. T. Goodin as Trustee entered into and took charge of all and singular said property, work and business and so continued until on or about August 16, 1919. [1002]

That said work and business necessarily required the expenditure of a large sum of money, and in consequence of said mining operations theretofore carried on said corporation defendants became indebted to various and divers persons in a sum of money over \$200,000.00; that at said time, to wit, on or about August 16, 1919, the value of the product of the mining operations of said corporation defendants, to wit, tungsten, had become greatly depressed and depreciated in the market, and said defendants were unable to pay said indebtedness or any considerable portion thereof, and had no property upon which money could be raised for the payment and liquidation of said indebtedness, save and

except the property so, as aforesaid, mentioned and described as belonging to the defendants, Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, which property constituted the chief and most valuable asset and portion of the entire property. That, in consequence of said defendants' inability to pay or otherwise adjust said indebtedness, they were threatened with attachment suits and litigation of various kinds which, if instituted, would have impaired and wasted the assets of defendants, destroyed their credit, and ultimately forced them into involuntary bankruptcy. That commencing about June 6, 1919, to on or about August 16, 1919, as defendants are informed and believe and so allege, the plaintiff, taking advantage of the extreme financial stress and difficulties of defendants and for the sole purpose of harassing defendants with suits and litigation and thereby making it impossible for defendants to continue said mining operations, and to coerce and compel defendants to either accede to the plaintiff's said [1003] demands for a modification of the contracts, Exhibits "B" and "C," or be forced into bankruptcy, said plaintiff did attempt to dissuade certain creditors from agreeing to said extension agreement, and also did purchase and attempt to purchase and obtain assignments to himself of outstanding claims against said defendants amounting to about \$20,000.00 and that to avoid the said consequences of plaintiff's holding such claims defendants were compelled to and did pay said claims with money borrowed by them from said codefendant

W. J. Loring, for that purpose. That on August 16, 1919, said defendants were owing a large sum of money for labor performed upon and in said mining operations and business and were, as aforesaid, without funds wherewith to discharge the same, and to that end said defendant, Nevada Humboldt Tungsten Mines Company had borrowed ten thousand (\$10,000.00) Dollars from its said codefendant, W. J. Loring, with which to pay, and which was used to pay, said labor claims.

That shortly prior to August 16, 1919, said defendants entered upon negotiations with the codefendant, W. J. Loring, with a view of selling to the said W. J. Loring, the above-described mining ground and certain personal property so belonging to the defendants, Nevada Humboldt Tungsten Mines Company and Tungsten Products Company, to enable these defendants to extricate themselves from the financial difficulties aforesaid and to pay their indebtedness, pursuant to which said negotiations, the said codefendant, W. J. Loring, offered to purchase the above-described property of the defendants, Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company, for the sum of \$333,333.33 as the full purchase price thereof. [1004]

That thereupon on August 16, 1919, a meeting of the Board of Directors of said Nevada Humboldt Tungsten Mines Company was duly called and held in the manner and form as required by law and the By-laws of said defendant, and that at said meeting, at which all members of said Board were pres-



ent and acting, the said Board of Directors duly, regularly and unanimously passed a resolution accepting the offer of the said W. J. Loring, as aforesaid, and authorized, directed and empowered the President and Secretary of said defendant to execute, on its behalf, an agreement or contract of sale with the said W. J. Loring, for the sale of the mining ground, premises and property herein particularly described as being the property of said defendant, and in said contract so authorized the said Tungsten Products Company, as to its property, was joined with said defendant, Nevada Humboldt Tungsten Mines Company, as a party of the first part.

That the sale so authorized and consummated was not intended to, and did not, include all of the property and assets of said corporation defendants. That excluded from said sale so agreed upon, is the following described property and assets, which at all times, since long prior to August 16, 1919, on August 16, 1919, and on August 23, 1919, belonged to and was held and owned by said defendant, Nevada Humboldt Tungsten Mines Company, to wit;

The franchise and business of said defendant, its books, corporate seal and records, and mining machinery and supplies of the value of \$1106.25 or thereabouts then on hand. The franchise and business of said Tungsten Products Company, its books, corporate seal and records, property belonging to said Tungsten Products [1005] Company, were also excluded from said sale.

That by the terms of said agreement the said co-

defendant, W. J. Loring, promised and agreed to pay or cause to be paid, to said Nevada Humboldt Tungsten Mines Company and the said Tungsten Products Company as the purchase price for the property so, as aforesaid agreed to be sold and purchased the said sum of \$333,333.33 in the manner following:

\$50,000.00 on or before September 1, 1919, the further sum of \$50,000.00 on or before October 1, 1919, the further sum of \$50,000.00 on or before November 15, 1919, the further sum of \$50,000.00 on or before December 27, 1919, the further sum of \$33,333.33 on or before February 4, 1920, the further sum of \$25,000.00 on or before May 4, 1920, the further sum of \$25,000.00 on or before August 4, 1920, the further sum of \$25,000.00 on or before November 4, 1920, and the further sum of \$25,000.00 on or before February 4, 1921, all of said payments to be made to the credit of said Nevada Humboldt Tungsten Mines Company and the said Tungsten Products Company at the First National Bank of Lovelock, Nevada, by payment thereof to its cashier, J. T. Goodin, who was also the trustee for the creditors of said corporation defendants, with instructions from said companies to said Goodin to first pay off the said loan of Ten Thousand (\$10,000.00) Dollars so, as aforesaid, procured to pay the labor claims, and thereafter pay out said installments so received by him to the respective creditors in accordance with the instructions contained in a written declaration of trust delivered to and filed with said cashier and trustee, leaving

the remainder of said moneys so paid to the credit of said corporation [1006] defendants available for corporate purposes and business of said companies.

That thereupon the said Board of Directors duly and unanimously passed a further resolution at said meeting, authorizing, empowering and directing the President and Secretary of said Nevada Humboldt Tungsten Mines Company to make, execute and deliver on behalf of said defendant, and in accordance with the terms of said contract so agreed on, all necessary deeds, bills of sale and conveyances for the transfer of said property to the said W. J. Loring.

That at the time of the organization of said Nevada Humboldt Tungsten Mines Company, by-laws were duly adopted by it in the manner as prescribed by law and said by-laws at all times herein mentioned, have been in full force and effect; that said by-laws duly vest in the Board of Directors of said defendant, the power, among other things, to sell, assign or otherwise convey for and in the name of said defendant, any of its real estate or other property, rights and privileges whatsoever, on such terms and conditions as said Board of Directors may think fit.

That thereupon at said meeting of the Board of Directors of said Nevada Humboldt Tungsten Mines Company, and by way of further assurance only, of the sale and transfer of said property, a meeting of the stockholders of said defendant was called to meet at the office of the company, on

August 23, 1919, for the purpose of approving and further ratifying the sale of said Company's property described in said contract to the said W. J. Loring.

That the by-laws of said defendant then and now in [1007] full, force and effect provide for a five days' written notice to be given of the time, place and purpose of special meetings of stockholders, and that a notice was mailed to each stockholder of record, said notice being dated August 16, 1919, and notifying stockholders of the day and hour of said meeting to wit, August 23, 1919, at 2 o'clock P. M. and fully stating the special purpose and business proposed to be transacted at said meeting, and that a copy of said notice enclosed in an envelope securely sealed and directed to each and every stockholder of record of said defendant, postage fully prepaid, was deposited in the United States post-office at Lovelock, Nevada, pursuant to said by-laws and giving notice in accordance therewith, that a copy of said notice was so mailed to said plaintiff, and the same was actually received by him prior to August 23, 1919, the date of said meeting; that pursuant to said notice the meeting of the stockholders of said defendant corporation was duly held on August 23, 1919, at which meeting there was 941,800 shares of stock of said defendant corporation present in person or by proxy. That on said August 23, 1919, and on August 16, 1919, the total issued and outstanding stock of said defendant entitled to vote at such stockholders' meetings was 1,000,000 shares. That plaintiff was the owner and



holder of 5000 shares, and no more, thereof. That said stockholders' meeting was regularly and duly convened, and thereupon a resolution was unanimously adopted ratifying and approving the act of said Board of Directors on August 16, 1919, in authorizing and directing the President and Secretary to execute, on behalf of said defendant corporation, the aforesaid contract and agreement made between said defendant and the Tungsten Products Company on the one part and the said W. J. Loring on the other part, and ratified and approved the act of said Board of Directors in [1008] that behalf, and adopted the same as the act of the stockholders of said Nevada Humboldt Tungsten Mines Company.

That at said stockholders' meeting a further resolution was duly and unanimously passed, directing, authorizing and empowering the President and Secretary of said defendant to make, execute and deliver to the said W. J. Loring, good and sufficient deeds and bills of sale of the property of said company, described in and under the terms of, and as provided in said contract, and also that the Board of Directors of said defendant were ordered and directed by said resolution to cause said contract with said W. J. Loring to be fully carried out and performed on the part of said defendant, 941,800 shares being voted in favor of said resolution and no shares being voted against the same. That the said J. T. Goodin who had previously been duly selected and appointed a trustee for creditors of said corporation defendants, as herein set forth,

there and then in writing duly approved said contract on behalf of the creditors of said corporation defendants and consented to the same. That all and singular the allegations herein with respect to the action of the Board of Directors' by-laws, notices and calls for meetings, apply to the defendant Tungsten Products Company, except that at the stockholders' meeting of said company held on August 16, 1919, there were present stockholders owning and holding 99,680 shares of the stock, being the entire issued and outstanding capital stock of said company, and that the stockholders so owning and holding said entire capitalization of said Tungsten Products Company, and the stockholders owning 991,800 shares of the [1009] 1,000,000 shares of issued stock of said Nevada Humboldt Tungsten Mines Company on August 16, 1919, duly signed and executed a written ratification of said contract, Exhibit 1, full true and correct copies of which ratifications are hereunto annexed, marked Exhibits 2 and 3 respectively.

That thereupon and immediately upon adjournment of said stockholders' meeting on said August 23, 1919, a special meeting of the Board of Directors of said Nevada Humboldt Tungsten Mines Company was duly held at its said office, at which meeting all members of said Board of Directors, were present and acting, and that at said Directors' meeting a resolution was duly adopted, authorizing, empowering and directing the President and Secretary of said defendant to make, execute and deliver to said W. J. Loring good and sufficient

deeds of conveyance, bills of sale, and assignments conveying to said W. J. Loring the said described property of said defendant according to the terms of that certain agreement so, as aforesaid, made on August 16, 1919, by and between said corporation defendants on the one part and said W. J. Loring on the other part, and also to accept from said W. J. Loring a mortgage to said companies of the real estate included in said conveyance to secure the unpaid purchase price thereof.

That thereupon and pursuant to the authorization hereinbefore set forth, on August 23, 1919, said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company through their respective Presidents and Secretaries, under their respective corporate seals, duly executed and delivered to said W. J. Loring, conveyances, bills of sale and [1010] assignments of the properties belonging to them, respectively, set forth and described in said contract of August 16, 1919, and said corporation defendants received and accepted from said W. J. Loring, the mortgage covering the real property set forth in said agreement of August 16, 1919, to secure the purchase price of the properties covered by said agreement of purchase and sale in compliance with the provisions of said resolutions. That pursuant to and in compliance with the terms and conditions of said contract of sale and purchase, and of said mortgage the codefendant, W. J. Loring, paid to said corporation defendants, on August 29, 1919, on account the said purchase price, the sum of \$50,000.00; on October 1, 1919, the further sum of

\$50,000.00; on November 15, 1919, the further sum of \$50,000.00; on December 27, 1919, the further sum of \$50,000.00; on February 4, 1920, the further sum of \$33,333.33 and on May 4, 1920 the further sum of \$25,000.00. And these defendants verily believe and so allege that said codefendant, W. J. Loring will continue to pay and deliver to said corporation defendants all other and additional moneys which may become due by the terms of said contract and mortgage, until the balance now unpaid, to wit, \$75,000.00 has been fully and finally paid.

### III.

Defendants further aver and show to the Court that plaintiff has been guilty of laches in asserting his alleged rights and in the filing of his complaint herein in support thereof, and in this behalf said defendants allege; that on June 17, 1919, for the better adjustment of the said indebtedness of said corporation defendants and for the protection [1011] of their numerous creditors, one J. T. Goodin was appointed by said creditors a trustee for the use and benefit of all the creditors of said corporation defendants, with the power, among other things to sue for, collect, and receive payment from defendants for and on account of the several claims of creditors so represented by said trustee.

That on August 23, 1919, and as a part of said transaction of sale to said codefendant, W. J. Loring, the said J. T. Goodin was duly appointed the agent and attorney in fact for said corporation defendants and authorized and directed to pay all the said creditors before paying any moneys accruing



from said sale to said corporation defendants; That pursuant to said authorization and direction, and as soon as said purchase price moneys were available, said J. T. Goodin did distribute and pay to said creditors according to their several claims, an aggregate of over \$200,000.00. That said creditors are numerous and scattered and it has been, and is, impossible to obtain return from said creditors of the money so paid to them. That said defendants have no property, assets or means sufficient or whereby they could raise said \$258,333.33, or any considerable portion thereof wherewith to make restitution to said codefendant, W. J. Loring of the moneys so, as aforesaid, paid by him and received to the use and benefit of said corporation defendants. That all and singular the foregoing facts were at all times well known to and understood by plaintiff, notwithstanding which, without sufficient or any reason, he neglected and delayed bringing his said suit until April 17, 1920, and thereby knowingly allowed sufficient time to elapse [word "over" interlined above line 16 before filing—T. J. E.] [1012] so that, under the terms of said contract with the said W. J. Loring, said corporation defendants had collected and received \$233,333.33 on account of said purchase price and distributed over \$207,000 thereof to and among the creditors of said respective corporations.

That plaintiff at all times knew that said corporation defendants intended to and would promptly collect when and as soon as the same became due, the payments on account of said purchase price under said contract with the defendant, W. J. Lor-

ing, and intended to and would thereupon immediately pay out and distribute the same to said creditors, as aforesaid.

That defendants notified said plaintiff that when said contracts, Exhibit "B" and "C," expired by limitation on June 16, 1919, and said contract Exhibit "A" expired by limitation on July 16, 1919, they would refuse to recognize plaintiff as having any further rights thereunder or to the subject matter thereof, and plaintiff had knowledge at all times since June 6, 1919, that these defendants would not in any manner recognize plaintiff as having any rights whatsoever under said contracts, Exhibits "B" and "C" and since July 16, 1919 under said contract Exhibit "A" and defendants here aver that plaintiff by failing and neglecting to promptly and legally assert his alleged rights, these defendants were led to believe and did believe and rely upon such conduct as consent and acquiescence by said plaintiff to defendants' refusal to further consider said contracts, Exhibits "A," "B" and "C," as of any binding force, and as consent and acquiescence by said plaintiff in said contract, and sale transaction with said defendant, W. J. Loring ["over \$207,000 thereof" interlined line 4 before filing—T. J. E.]. [1013] In this behalf defendants further aver that said plaintiff was a creditor of said defendant corporations and on August 16, 1919, commenced an action in this court to obtain judgment for the sum so claimed, said action being No. 2262 on the records of this court; that thereafter and on or about February 13, 1920, for the

purpose of buying their peace, these defendants compromised and settled said suit by the payment of \$7334.04, \$1000.00 of which had been paid on January 8th, 1920, and said \$6334.04 paid on February 13, 1920 was paid to and received by plaintiff with the full knowledge then and there that the same was a portion of moneys paid to these defendants by the defendant W. J. Loring under and pursuant to said contract Exhibit 1.

#### IV.

And these defendants further aver and show to the court that plaintiff should not have or maintain his said bill of complaint herein for as much as the same is wholly without equity in this, among other things, to wit; that said plaintiff has not in his said complaint, or in any manner or at all, before or since the commencement of his said suit ever alleged, claimed or asserted, that said contract of April 2, 1919, Exhibit C, as proposed by plaintiff in his complaint herein to be modified and reconstructed by abatement of certain of the terms thereof, is as to the consideration so proposed to accrue to said defendants, either the fair, just or reasonable value of said property embraced by such proposed agreement, or that the enforcement of the same as so modified would be just or equitable. [1014]

#### V.

For a further answer and defense to plaintiff's complaint these defendants aver and show to the Court that said plaintiff should not have or maintain this action for in that heretofore, to wit, on

August 16, 1919, said plaintiff commenced an action against the individual defendants herein named to recover the sum of \$114,579.44 as damages, said action being numbered on the records of this court as Docket 2263, that in and by his complaint in said action, No. 2263, said plaintiff alleges as facts constituting his cause of action, the same alleged false and fraudulent representations as are alleged in his complaint in the instant case and claimed damages resulting therefrom in said sum of \$114,579.44, all of which fully appears from plaintiff's complaint in said action No. 2263, a full, true and correct copy whereof is annexed hereto, marked Exhibit 4, and here referred to.

That said individual defendants were duly served with summons in said action No. 2263 and thereafter appeared therein and filed their answer to said complaint on the merits and that thereafter plaintiff filed his reply in said action, full, true and correct copies of which said answer and reply are hereto annexed marked respectively Exhibits 5 and 6, and here referred to. That said action No. 2263 ever since has remained and now remains pending in this court; that at the time of the commencement of said action plaintiff was fully advised of and knew and understood all and singular the facts and circumstances embraced in the instant action and with such knowledge deliberately selected said remedy, to wit, [1015] the action for damages being said action No. 2263 and then and thereby made an irrevocable election of remedies and is equitably barred from having or maintaining the instant ac-



tion, a proceeding and remedy wholly inconsistent with the remedy so as aforesaid elected by plaintiff by his said action No. 2263.

WHEREFORE these defendants say that plaintiff's bill of complaint is without equity and pray that he take nothing thereby and that the same be wholly denied, disallowed and dismissed and that said defendants recover from plaintiff their costs and disbursements herein, and that it have and receive such other and further relief as the equities of the case may warrant, and which to the Court may seem meet and proper.

COOKE, FRENCH & STODDARD,  
Attorneys for Defendants, Separately Answering  
as Above Stated.

State of Nevada,  
County of Washoe,—ss.

H. J. Murrish, being first duly sworn, deposes and says; that he is the Vice-President of the Nevada Humboldt Tungsten Mines Company, a corporation, one of the defendants in the above-entitled action, and makes this verification on behalf of the said defendant as well as for and on behalf of all other defendants separately answering as above stated; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters alleged upon information and belief, and as to those matters he believes it to be true.

H. J. MURRISH.

Subscribed and sworn to before me this 15th day of May, 1920.

[Seal]

T. J. EDWARDS,  
Clerk. [1016]

**Exhibit No. 1.**

THIS CONTRACT, made and entered into this sixteenth day of August, one thousand nine hundred and nineteen, by and between Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and Tungsten Products Company, also a Nevada Corporation, the parties of the first part, and W. J. Loring, of the City and County of San Francisco, State of California, the party of the second part,

**WITNESSETH:**

That the parties of the first part, for and in consideration of the sum of One (\$1.00) Dollar, lawful money of the United States, to them paid by the party of the second part, the receipt whereof is hereby admitted, and in consideration of the moneys to be paid by the party of the second part at the times and in the manner hereinafter provided, do by these presents covenant and agree with the party of the second part to sell, assign, grant, convey and set over unto the said party of the second part, and his heirs and assigns, and the party of the second part hereby agrees to buy all the real and personal property now owned by the parties of the first part, including all rights, easements, contracts for power, capital stock of other corporations owned by the parties of the first part, or by either of them, and

in brief every article of real, personal or mixed property, of every kind and description, now owned by the parties of the first part, or either of them (excepting only the books and corporate records of the parties of the first part), and expressly including the following real and personal property, to wit:

### REAL PROPERTY.

All those certain mining claims and mineral bearing lodes, veins and deposits situated in an unknown mining district, [1017] in the County of Pershing, formerly County of Humboldt, State of Nevada, described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada corporation, dated February 17, 1917, and recorded in Book 53 of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz rock and earth therein; and all the rights, privileges and franchises thereto incident,

appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence west, along the South line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys; together with all the rights, privileges and appurtenances thereunto belonging or in any wise [1018] appertaining. Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed, dated April 25, 1918, recorded in Book 53, page 76, of Deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also, that certain piece or parcel of land lying, situate and being in the County of Pershing (formerly County of Humboldt), State of Nevada, more particularly described as follows:

Beginning at the Southeast corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one Hundred



feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east one hundred (100) feet; to the place of beginning. Being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record reference is hereby expressly made; together with the mill, plant, improvements, tenements, and hereditaments thereon, and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or over the northeast quarter of Section Thirty-five (35), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or [1019] therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

## PERSONAL PROPERTY.

And also, all of the personal property of every kind and description owned by the parties of the first part and each of them, including all of the issued capital stock of the Mill City Development Company owned by said parties of the first part, or either of them, with the Certificates representing the same properly endorsed in blank, and all ore in demps, at the mill or in the mine; all buildings erected upon any of the lands hereinbefore described; all tungsten concentrates including all concentrates in the mill or elsewhere owned by either of the parties of the first part and all concentrates in the possession of the party of the second part, the Pacific Tungsten Company, or Wells Fargo Nevada National Bank of San Francisco, and including all moneys due upon concentrates heretofore sold by either of the parties of the first part to the Western Ore Purchasing Company of Reno, Nevada; all mills, machinery, concentrating tables, engines, compressors, motors, belting, cables, hoists and every other article of machinery or equipment which is now situated on the property of the parties of the first part or either of them above described, or in the concentrating mill thereon, or elsewhere; all mine cars, track, buckets, skips, drilling steel, jack-hammers, stoping or drilling machinery of every kind and description and all of the tools and implements used in or about the mine and mill owned by the parties of the first part, or either of them, including all picks, shovels, blacksmith tools and equipment, carpenters and millwrights' tools; all

wagons and [1020] trucks; all mine and mill supplies of every kind, wheresoever situated, including powder; all boarding-house and bunk-house furnishings and equipment; and in brief every article of personal property including credits owned by the parties of the first part or either of them, excepting only their books, corporate seal, and records, and except any item of cash in bank above the amount of \$195.46, and except supplies now at Mill City amounting to \$1106.25 (being the following items: Baker, Hamilton & Pacific Co., \$3.27, \$25.78, and \$19.10; The Gallagher Machinery Co., \$120.00; The Giant Powder Co., \$813.40; Allis-Chalmers Mfg. Co., \$353.60, and the Stearns-Roger Co., \$71.10).

The parties of the first part also agree to sell, assign, transfer and set over unto the said party of the second part, and his assigns, all of their right, title, interest, claim or demand in, to, or of any and all moneys which may hereafter be found to be due to them, or to either of them, from the Government of the United States by reason of any claim for relief which they, or either of them, have filed or presented under that certain act of Congress of the United States known as the War Minerals Relief Act.

The said party of the second part hereby covenants and agrees to pay or cause to be paid to the parties of the first part as the full purchase price of the entire properties of the parties of the second part as above described, including said right to moneys by reason of said War Minerals Relief Act, the sum of Three Hundred Thirty-three Thousand

Three Hundred Thirty-three and Thirty-three One-hundredths (\$333,333.33) Dollars, in lawful money of the United States at the times and in the manner following:

The sum of Fifty Thousand (\$50,000.00) Dollars on or before September 1st, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars [1021] on or before the first day of October, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the fifteenth day of November, 1919;

The further sum of Fifty Thousand (\$50,000.00) Dollars on or before the twenty-seventh day of December, 1919;

The further sum of Thirty Thousand Three Hundred Thirty-three Dollars and Thirty-three cents (\$33,333.33) on or before the 4th day of February, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of May, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of August, 1920;

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of November, 1920; and

The further sum of Twenty-five Thousand (\$25,000.00) Dollars on or before the 4th day of February, 1921.

All payments of the installments of the purchase



price above set forth shall be made in cash, or by certified check, or by cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its cashier, J. T. Goodin, who is Trustee for the Creditors of said parties of the first part, who shall first pay off the loan of Ten Thousand (10,000.00) Dollars procured to pay off labor claims, and shall thereafter pay out said installments so received to said respective creditors in accordance with his trust, but the payment thereof by said party of the second part to said Cashier and Trustee, or his successor as such, shall be a complete performance by said party of the second part of the payment of each installment so paid and said party of the second part shall not be obligated to ascertain [1022] whether said payments by said Cashier or Trustee shall have been properly distributed.

IT IS FURTHER UNDERSTOOD AND AGREED that the said party of the second part shall receive credit upon the installment of the purchase price falling due on the first day of September, 1919, for the sum of Thirteen Thousand One Hundred Fifty-eight and Fifty-two one-hundredths (\$13,158.52) Dollars, being the amount of a certain claim against the Nevada Humboldt Tungsten Mines Company assigned by Rochester Mines Company, a Nevada Corporation, to the party of the second part, and also for the sum of Four Thousand Two Hundred Eleven and Sixty-two One-hundredths (\$4,211.62) Dollars, being the

amount of a certain claim against the Nevada Humboldt Tungsten Mines Company, assigned by Rochester Combined Mines Company, a Nevada corporation, to the party of the second part; said claims or accounts now being the property of the party of the second part and due and owing to him.

IT IS EXPRESSLY COVENANTED AND AGREED that the party of the second part shall, upon the execution of this contract, have immediate possession of the properties above described, and all thereof and the right to conduct and operate said properties, and extract, ship, reduce and sell ore and concentrate therefrom, and shall apply the net proceeds of any concentrates derived from such operation by the party of the second part, first, to the payment of the debts of the corporation herein set forth, obtaining credit therefor upon the installments of the purchase price in the manner herein set forth, and thereafter shall have the right to apply such net proceeds upon said installments of the purchase price as may then remain.

IT IS FURTHER AGREED that the party of the second part, or his assigns, shall have the right to collect all of the accounts and bills receivable, due to said parties of the first part, [1023] or either of them, and to sell any of the tungsten concentrates covered by this agreement and any tungsten concentrates produced through the operation by him of any of said properties, and shall apply any moneys collected thereunder, whether out of account due said parties of the first part, or either of them, or collected from bills receivable, due, or

otherwise, and all moneys derived from the net proceeds of concentrates so sold shall be paid over and apply upon the purchase price of said properties and in payment of the installments as the same become due and said party of the second part shall receive credit therefor upon the next installment falling due after the payment thereof.

In case of any default in the payment of any of said installments of the purchase price when due, then, at the option of said parties of the first part, this agreement shall terminate and be of no further force and effect, and said parties of the first part shall not be obligated to do anything further thereunder, and they shall be entitled to retake possession of said real property, together with any personal property thereon, and to retain any payments hereunder theretofore made as full and liquidated damages for the failure of the party of the second part to complete this agreement, and for rentals for the use and occupation thereof, and for damages caused by the extraction of ore therefrom and its change of appearance resulting therefrom and otherwise, but the option set forth in this paragraph shall not be deemed to abridge any right to which the parties of the first part may be entitled under the provisions of this agreement.

The parties of the first part further covenant that within seven days from the date of this contract they will make [1024] and execute and deliver to the party of the second part or his assigns, good and sufficient deeds conveying all of the real property owned by the parties of the

first part and each of them, and will also make, execute and deliver good and sufficient bills of sale conveying all of the personal property owned by the parties of the first part and each of them, and also good and sufficient assignments of the various contract, franchises, rights or easements and capital stock of other corporations which the parties of the first part or either of them may own. Simultaneously with the delivery of said deeds to the party of the second part, by the parties of the first part, the party of the second part shall make, execute and deliver to the order of said parties of the first part, a properly executed mortgage containing the usual covenants covering the real property described in the deeds from each of said parties of the first part to the party of the second part, securing to said parties of the first part the payment of the installments of the purchase price of all of the properties at the dates and in the place set forth in this agreement. Said mortgage shall also contain a clause covering the liquidation of creditor's claims as herein set forth.

Time shall be of the essence of this agreement but there shall be a five days' grace allowed on the date set for the payment of each installment before the party of the second part shall be considered to be in default thereon.

It is further stipulated and agreed that this contract shall run in favor of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties; and it is further agreed that the party of the second part shall



have the right and power to assign this contract.

IN WITNESS WHEREOF the said Nevada Humboldt Tungsten [1025] Mines Company has by resolution of its Board of Directors caused its corporate name to be hereto subscribed by its President and Secretary and its corporate seal to be hereto affixed and said Tungsten Products Company has also, by resolution of its Board of Directors, duly adopted, caused its corporate name to be hereto subscribed by its President and Secretary and its corporate seal to be hereto affixed, and the party of the second part has hereunto set his hand, in duplicate, the day and year first above written.

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY,

By L. A. FRIEDMAN,  
President.

[Corporate Seal] Attest: R. NENZEL,  
Secretary.

TUNGSTEN PRODUCTS COMPANY,

By L. A. FRIEDMAN,  
President.

[Corporate Seal] Attest: R. NENZEL,  
Secretary.

W. J. LORING.

I hereby approve the foregoing contract on behalf of the Creditors of the parties of the first part and consent to the same.

J. T. GOODIN,  
Trustee for Creditors. [1026]

**Exhibit No. 2.****KNOW ALL MEN BY THESE PRESENTS:**

That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Nevada Humboldt Tungsten Mines Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Nevada Humboldt Tungsten Mines Company.

IN WITNESS WHEREOF, we have hereunto set our hands this sixteenth day of August, A. D. 1919.

L. A. Friedman .....owning 91,640 shares

Lena J. Friedman .....owning 250,000 shares

R. Nenzel .....owning 102,000 shares

G. K. Hinch .....owning 10,000 shares

H. J. Murrish .....owning 101,000 shares

C. H. Jones .....owning 100,000 shares

John G. Huntington ...owning 50,000 shares

By R. Nenzel, atty. in fact.

Frank Carlstrom .....owning 60,000 shares

C. W. Poole .....owning 219,160 shares

V. A. Twigg .....owning 3,000 shares

J. T. Goodin .....owning 5,000 shares

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of the Nevada Humboldt Tungsten Mines Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date, and are each the owners of the number of shares set opposite their respective names. [1027]

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Nevada Humboldt Tungsten Mines Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Nevada Humboldt Tungsten Mines  
Company, a Nevada Corporation. [1028]

**Exhibit No. 3.**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Tungsten Products Company on the one

part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Tungsten Products Company.

IN WITNESS WHEREOF, we have hereunto set our hands this, the sixteenth day of August, A. D., 1919.

L. A. Friedman.....	owning	1,000 shares
L. A. Friedman, Trustee, ...	owning	94,680 shares
H. J. Murrish .....	owning	1,000 shares
R. Nenzel .....	owning	1,000 shares
C. H. Jones .....	owning	1,000 shares
John G. Huntington .....	owning	1,000 shares

R. Nenzel, Atty. in Fact.

I, R. Nenzel, Secretary of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of Tungsten Products Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Tungsten Products Company this 16th day of August, 1919, and affixed



hereto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Tungsten Products Company, a Nevada Corporation. [1029]

**Exhibit No. 4.**

In the United States District Court in and for the  
District of Nevada.

AT LAW.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J. G.  
HUNTINGTON, and LENA J. FRIEDMAN,  
Defendants.

**BILL OF COMPLAINT.**

Comes now the plaintiff in the above-entitled action and complains of the defendants, and for cause of action alleges:

**I.**

That plaintiff is a citizen and resident of the State of Colorado and of the city and county of Denver in said state.

**II.**

That the defendants, and each of them, are citizens and residents of the State of Nevada, and of Lovelock, Pershing County in said state.

**III.**

That this is a controversy between citizens and

residents of different states, and the amount in controversy, herein, exclusive of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars.

#### IV.

That on or about the 16th day of January, 1919, [1030] the defendants executed, made and entered into a contract with the plaintiff for the sale of all of their respective interests in the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, said interests of the respective parties being represented by certain shares of stock in said companies; said Nevada Humboldt Tungsten Mines Company being then and there the owner of certain mines and mining claims and mining rights in certain real estate, all situated near Mill City in what is now the County of Pershing in the state of Nevada; that the Tungsten Products Company was a subsidiary of said Nevada Humboldt Tungsten Mines Company and owned and operated a mill for the treatment and concentration of certain scheelite ores produced by the Nevada Humboldt Tungsten Mines Company at its property aforesaid, and that the Mill City Development Company was a corporation owning certain real estate, also a pipe-line and water rights, and about fifty (50%) per cent of the capital stock of said corporation being then and there owned by the Nevada Humboldt Tungsten Mines Company or the Tungsten Products Company hereinbefore mentioned. That a copy of said contract for the

sale of said respective interests of the defendants is attached to this Complaint, made a part hereof and marked "Exhibit A."

V.

That sometime immediately preceding the making and execution of the contract of January 16th, Exhibit "A," there had been brought to the attention of the plaintiff a report of one Howland Bancroft, a mining engineer, of and concerning the mines, mining property and mining rights of the Nevada Humboldt Tungsten [1031] Mines Company, which said report showed the amount of development which then existed upon said mining property, and showed that about nine thousand (9,000) tons of scheelite ore of an average of 1.75% tungstic acid had been developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company; that at all of the times mentioned in this Complaint the defendants, Murrish, Nenzel and Poole were directors of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, and the defendant Poole had general charge of all mining and milling operations of said Nevada Humboldt Tungsten Mines Company and its subsidiary, the Tungsten Products Company; that the facts and truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company and of the development work which had been performed and the new development work in process on and within said mines, mining claims and mining rights of said Nevada

Humboldt Tungsten Mines Company, and the amount of ore developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company were at all times mentioned in this Complaint peculiarly within the knowledge and information of the defendants, and particularly of the defendants, Poole, Nenzel, Murrish and Friedman. That in or about the month of March, 1919, plaintiff informed the defendants that he would not exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16th; that thereupon the defendants, Poole, Murrish, Nenzel and Friedman, acting for themselves and for the other defendants, falsely and fraudulently, by means of letters and telegrams, informed the plaintiff that further and new development work had been carried on within the mines, mining claims and mining rights, and property of the [1032] Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and ready for mining large quantities of scheelite ore of commercial value and capable of being concentrated, and the concentrates so returned being of great value; and thereupon, and on or about the 2d day of April, 1919, the defendants Poole, Murrish and Nenzel came to Denver, Colorado, for the purpose of inducing the plaintiff to take a new contract for the disposition of their respective interests, or a part thereof, and the plaintiff, relying upon said representations of the defendants Poole, Murrish and Nenzel, who



then and there represented themselves, and were acting, as the representatives, agents and attorneys in fact for the other defendants, entered into a contract whereby plaintiff undertook to raise sufficient money to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, for which said service the plaintiff was to receive sixty-two (62%) per cent of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) per cent of the issued capital stock of the Tungsten Products Company and sixty-two (62%) per cent of one-half of the issued capital stock of the Mill City Development Company, a full, true and correct copy of said contract being attached to this Complaint, made a part hereof, and marked Exhibit "B," said contract was executed at Denver, Colorado; that the defendants Poole, Murrish and Nenzel acting for themselves and as the agents of and for the other defendants, for the purpose of inducing the plaintiff to enter in and upon said supplemental contract, Exhibit "B," of date of April 12, 1919, then [1033] and there falsely and fraudulently, and with intent to deceive the plaintiff, represented to plaintiff that when the contract of January 16, 1919, was entered into, Exhibit "A," there was blocked out, developed and in sight in said mine about nine thousand (9000) tons of scheelite ore carrying 1.75% tungstic acid, and that since said date great and additional ore bodies of equal grade had been developed; that a large

amount of new development work had been done and performed upon said mines and that there was then on said 2d day of April, blocked out, in sight and ready for mining and reduction into concentrates over sixty thousand (60,000) tons of scheelite ore which would carry from 1.50% tungstic acid to 1.75% tungstic acid; that each and all of said representations were false and untrue and were known by the defendants at the time they were made to be false and untrue, and were made for the purpose of deceiving the plaintiff and for the purpose of causing him to undertake and carry out the provisions of said supplemental contract of April 2, Exhibit "B," attached hereto; that in truth and in fact at said time there was opened up and developed and in sight in said mine not to exceed nineteen thousand (19,000) tons of scheelite ore of an average value not to exceed 1.75% tungstic acid.

## VI.

That plaintiff, relying upon and believing said false and fraudulent representations of the defendants, so made on or about the 2d day of April, 1919, immediately gave practically his sole time and attention to the carrying out of the terms of said contract by which he was to raise for the benefit of the corporations, Nevada Humboldt Tungsten Mines [1034] Company, Tungsten Products Company and Mill City Development Company, sufficient moneys for the payment of their debts and outstanding obligations, and in so doing and in his endeavor to carry out said provisions of said contract, and

for the purpose of consummating the same, laid out and expended for traveling expenses of plaintiff to Lovelock, Nevada, San Francisco, California, New York City and to various other places, for assaying, maps, surveys, expert services for mining examinations and reports, legal fees for the examination of titles and of the organization of the corporations, telegrams and telephones the sum of Eight Thousand Eight Hundred Twenty and 21/100 (\$8,820.21) Dollars.

## VII.

That plaintiff also gave his time and efforts to said enterprise and the consummation of said contract during all of the time from April 2 to on or about June 1, 1919; that, as a result of the expenditures, time and efforts of the plaintiff, plaintiff succeeded and had pledged by himself and others associated with him an amount sufficient to meet any and all obligations of his under the terms of said contract, and sufficient to entitle him to receive sixty-two (62%) per cent of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) of the stock of the Tungsten Products Company, and sixty-two (62%) per cent of one-half of the Mill City Development Company under the terms of said contract of April 2, 1919, Exhibit "B."

## VIII.

That on or about the first of June, 1918, plaintiff discovered the falsity of the representations of the defendants, and thereupon his associates, who had agreed to furnish a large [1035] portion of the money necessary for the completion of the obli-

gations of plaintiff under said contract, withdrew from said undertaking and refused to go into the same or to advance any money whatsoever for it.

### IX.

That had the representations of defendants, as to the amount and quality of ore opened up, developed and in sight in said mine, been true, said ores would have had a net value, over and above all expenses of cost of mining, transportation and sale, of Three Hundred Twenty Thousand (\$320,000) Dollars; that the debts and obligations of said corporations were then, and are now, of about One Hundred Fifty Thousand (\$150,000) Dollars; that the net value of said mines and of the stock of said companies, after the payment of all debts, had the representations of defendants been true, would have been about One Hundred Seventy Thousand (\$170,000) Dollars; that in truth and in fact said corporations, and each of them are now insolvent; that the total value of their assets, including all ore developed, in sight and available, did not then, or now, exceed the sum of One Hundred *Twenty* (\$120,000) Dollars; that the ore in sight in said mine was not then, to wit on the 2d day of April, or now, of any other, further or greater value than Seventy Thousand (\$70,000) Dollars; that the value of the stock which plaintiff would have received under the terms of said contract, and to which he was entitled, had the representations of defendants been true, would have been One Hundred Five Thousand Four Hundred (\$105,400) Dollars.



X.

That by reason of the false and fraudulent representations [1036] aforesaid plaintiff has been damaged in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$114,579.44) Dollars.

WHEREFORE, Plaintiff prays judgment against the defendants, and each of them, in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$114,579.44) Dollars.

(Signed) NORCROSS, THATCHER &  
WOODBURN,

Attorneys for Plaintiff, [1037]

EXHIBIT "A-2."

THIS AGREEMENT made between David Taylor, of Denver, Colorado, party of the first part, and L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, all residents of Lovelock, Nevada, being the holders of ninety-nine (99%) per cent of the capital stock of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company and L. A. Friedman, as Trustee, parties of the second part,

WITNESSETH:

THAT, WHEREAS said L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, are the owners and holders of stock in each of the above companies,

the number of shares of stock in each company being set opposite their respective signatures hereto, and

WHEREAS, L. A. Friedman is Trustee for all other of said second parties hereto, all of their interest in the Mill City Development Company, which said corporation is in the process of organization, and which said corporation has not as yet issued its stock, and

WHEREAS said second parties desire to sell all of their interest in the said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company and said Mill City Development Company, all of which corporations are corporations organized and existing under the laws of the State of Nevada, and

WHEREAS said first party is desirous of securing an option to purchase the entire interest of all of said second parties in all of said corporations, and

WHEREAS said first party has this day entered into a [1038] contract with the Nevada Humboldt Tungsten Mines Company, and said Tungsten Products Company to advance said corporations the sum of One Hundred Thousand Dollars (\$100,000.00) to enable said corporations to continue their business and operations and to discharge a portion of their indebtedness.

1. NOW, THEREFORE, in consideration of the premises and in consideration of the said first party hereby entering into said agreement to advance said One Hundred Thousand Dollars

(\$100,000.00) to said corporations, said second parties hereby grant and give to said first party an option to purchase all of the stock held by said second parties in the Nevada Humboldt Tungsten Mines Company and in the Tungsten Products Company, and all of the interests of said second parties in the Mill City Development Company at the price and in the manner hereinafter specified. This option shall be good up to and including the sixteenth (16th) day of July, 1919.

2. The price to be paid for all of said stock in all of said corporations owned by all of said second parties shall be Fifty Cents (.50) per share for each share of stock held by said second parties in the Nevada Humboldt Tungsten Mines Company, and said second parties shall transfer, assign and set over unto said first party without further charge or cost to said first party, all of the stock owned by said second parties in the Tungsten Products Company and the Mill City Development Company which they now own or shall be entitled to upon the complete organization of the Mill City Development Company; Total purchase price shall be \$498,400.00.

3. Said second parties will during the life of this option pay all of the debts and obligations of all of the said corporations; and agree that said corporations will maintain their plants and equipment in their present condition of efficiency, and will continue the present development work as it has heretofore been conducted. Said second parties will also complete [1039] the organization of the

Mill City Development Company and discharge all of their obligations to said Mill City Development Company.

4. It is further understood and agreed that no dividends of any kind, nature or description shall be paid by said corporations during the life of this option, and that none of the assets of said corporations shall be disposed of other than Scheelite concentrates provided that replacements of equipment shall be permitted.

5. It is further understood and agreed that no increase of salaries or bonuses shall be made, given, or paid to any officers or directors or stockholders of said corporations during the life of this option.

6. It is further understood and agreed that in case said option is exercised and said debts and obligations of said corporations are not paid at the time of the exercise of said option, the said first party shall deduct a sufficient amount from the purchase price to pay all outstanding debts and obligations and engagements of said corporations.

7. It is understood and agreed that the purchase price for said stock shall be paid as follows:

\$100,000.00 at the time said option is exercised  
\$25,000.00 on the first of each and every month thereafter until the total purchase price has been paid.

8. Said option shall be exercised by giving notice in writing to the Wells Fargo Nevada National Bank of San Francisco, and by mailing a written notice of such exercise of said option



addressed to each of said parties, addressed to Lovelock, Nevada Payments shall be made through the Wells Fargo Nevada National Bank of San Francisco, California. [1040]

9. Said second parties agree to deposit all of the stock of the Tungsten Products Company owned by said second parties, and Two Hundred Eighty-Five Thousand (285,000) shares of stock in the Nevada Humboldt Tungsten Mines Company within Ten (10) days from the execution of this option in the Wells Fargo Nevada National Bank of San Francisco. It is understood and agreed that the remaining shares of stock in said Nevada Humboldt Tungsten Mines Company, upon which option is hereby given, owned severally by said second parties are now up as collateral for certain loans to said individuals, and as to such stock, it is hereby agreed that within Ten (10) days from the execution of this agreement, each and every of the parties signatory hereto, who has such stock now up as collateral shall notify by letter the bank, person or company holding said stock as security of the giving of an option on said stock and shall further instruct said bank, firm or company in the event that the amount secured by such stock is not paid on or before July 15, 1919, to send the evidence of such debt together with the stock to the Wells Fargo Nevada National Bank for collection, with instructions to said bank, upon the payment of the obligation to place the stock, security therefor, with the escrow

herein mentioned, and forthwith mail to the first party a true and correct copy of said letter.

10. The said second parties agree to discharge said loans prior to the exercise of said option. In case said second parties do not discharge said loans, said second parties agree that the Wells Fargo Nevada National Bank shall from the proceeds of the first One Hundred Thousand Dollars (\$100,000.00) deposited, pay such indebtedness to said banks and secure said stock owned severally by said second parties and hold the same until the full [1041] purchase price has been paid. Upon the payment of the full purchase price of said stock all said stock shall be delivered to said first party.

11. Said second parties further agree to deposit in the escrow with said Wells Fargo Nevada National Bank resignations of all of their directors and to deliver one resignation to said first party for every One Hundred Thousand Dollars (\$100,000.00) is paid, Said second parties further agree that they will cause to be immediately elected to said Board of Directors of said corporation in place of the director resigning, the nominee of said first party. Upon the exercise of this option and the payment of said One Hundred Thousand Dollars (\$100,000.00,) the management of said corporations shall be turned over to said first party, and the said second parties will cause the Board of Directors of said corporations to name as general manager of Nevada Humboldt Tungsten Mines

Company and the Tungsten Products Company the nominee of said first party, which general manager shall have full power and authority to remove any and all superintendents, foremen, agents, servants and employees of said corporations and to employ any and all necessary superintendents, foremen, agents, servants and employees as may be necessary to operate said properties.

12. In the event said first party shall delay for a period of five (5) days to make any of the loans to said Nevada Humboldt Tungsten Mines Company and the said Tungsten Products Company called for in said loan agreement, the said second parties in their discretion may terminate this option by giving immediate notice thereof in writing to said first party.

13. Second parties agree that said One Hundred Thousand Dollars (\$100,000.00) loaned said Nevada Humboldt Tungsten Mines [1042] Company and said Tungsten Products Company shall be used solely to pay operating expenses, to purchase of reasonable supplies and reasonable equipment, and to discharge the indebtedness of said corporations.

14. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto

have hereunto set their hands and seal this 16th day of January, 1919.

(Signed)

DAVID TAYLOR,

First party.

L. A. FRIEDMAN,	106,640 shares
R. NENZEL,	102,000 shares
C. W. POOLE,	119,160 shares
H. J. MURRISH,	101,000 shares
(C. H. JONES,	100,000 shares
(G. K. HINCH,	10,000 shares
(JOHN G. HUNTINGTON,	50,000 shares
(J. T. GOODIN,	5,000 shares
(V. A. TWIGG,	3,000 shares

Signed by R. NENZEL,

Attorney in Fact.

LENA FRIEDMAN, 400,000 shares

Second parties.

L. A. FRIEDMAN,

Trustee.

[1043]

### EXHIBIT "B."

THIS AGREEMENT this day entered into between David Taylor, of Denver, Colorado, first party, and L. A. Friedman, Lena J. Friedman, C. W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and H. J. Murrish, second party,

### WITNESSETH:

WHEREAS the parties hereto, on or about January 16, 1919, entered into an agreement in



respect to the purchase and sale of certain stock of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, reference to which contract is hereby made and which said contract is made a part hereof, and

WHEREAS the Nevada Humboldt Tungsten Mines Company on the same date, entered into an agreement with the said David Taylor for the advance of certain moneys on scheelite concentrates, as more particularly appears in said agreement to which reference is hereby made, and

WHEREAS this agreement is supplemental to both of said agreements and all of said agreements are now to be read together and considered as one in so far as applicable, due reference being had to the changes herein made, and

WHEREAS, owing to the demoralization of the tungsten market it seems impossible for the said David Taylor to market scheelite concentrates or to interest parties in the purchase of tungsten properties, and for that reason it is deemed probable that said Taylor will not be able to exercise his option contained in the above-mentioned agreement, and

WHEREAS, by reason of the facts herein named it may become [1044] impossible for the Nevada Humboldt Tungsten Mines Company and the other companies above referred to to secure sufficient funds for the liquidation of their indebtedness, and

WHEREAS it is the purpose of this agreement

to so modify the said option as to enable the said Nevada Humboldt Tungsten Mines Company and its allied companies to pay its debts, continue its operation and secure itself from the jeopardy of possible loss through suits by its creditors,

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) each to the other in hand paid, it is mutually understood, covenanted and agreed as follows, to wit:

1. The first party undertakes to secure by borrowing for the Nevada Humboldt Tungsten Mines Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of Two Hundred and Twenty Thousand (\$220,000.00) Dollars, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing such sum of money, 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company, 62% of one-half of the

issued capital stock of the [1045] Mill City Development Company; that a deposit of the amount necessary to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided.

IT IS MUTUALLY UNDERSTOOD AND AGREED:

A. That the said sum raised by the first party herein is a loan to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not a payment for stock; and that same is to be evidenced by the issuance of redeemable preferred stock with a maximum of 7% cumulative interest, provided that said stock shall not be sold for less than 95% of par net to the Company.

B. That the second parties hereto will cause a new company to be organized to which the assets of the companies herein described shall be conveyed; or shall amend the present articles of the Nevada Humboldt Tungsten Mines Company and its allied companies hereinbefore mentioned, in order to effectuate this agreement as shall be required by the first party.

C. It is agreed that in such corporation, or in the amendment above provided, due and proper provision shall be made (1) that 80% of the Board of Directors must approve the sale of any of the property of the Company or the purchase of additional property; (2) that the cumulative voting

power of the common stock shall not be taken away; (3) that the net receipts from any relief received from the United States Government under the War-Minerals Relief Act of the corporations herein mentioned or any of them, shall inure to the benefit of such new corporation as may [1046] be formed; (4) that profits shall be distributed whenever same have accumulated to the amount of Fifty Thousand (\$50,000.00) Dollars or over, after the debts are paid, unless contrary provided by a vote of 80% of the Directors; (5) and further, that the preferred stock shall be redeemed out of the profits on June 30 or December 31, of every year, whenever the sum of Fifty Thousand (\$50,000.00) Dollars is accumulated, and before any dividends are paid on the common stock.

D. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that the performance of this agreement shall release the first party from any and all obligations to pay the purchase price of said stock mentioned in the option hereinbefore referred to.

E. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided in Paragraph 1 hereof.



Time is the essence of this agreement, and each and every clause hereof shall bind and benefit the heirs and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 2d day of April, 1919.

(Signed) DAVID TAYLOR,  
First Party. [1047]

C. W. POOLE,  
R. NENZEL,  
H. J. MURRISH,  
(L. A. FRIEDMAN,  
(LENA J. FRIEDMAN,  
(C. H. JONES,  
(G. K. HINCH,

By R. NENZEL,

Attorney in Fact.

(J. T. GOODIN,  
(V. A. TWIGG,  
(J. C. HUNTINGTON,

C. W. POOLE,

Attorney in Fact.

Second Parties. [1048]

United States of America,  
State of Nevada,  
County of Washoe,—ss.

David Taylor, being first duly sworn, deposes and says that he is the plaintiff in the above-entitled action, that he has read the foregoing complaint, and knows the contents thereof and that the same is true of his own knowledge, except as to matters

therein stated on information and belief and as to such matters he believes it to be true.

DAVID TAYLOR.

Subscribed and sworn to before me this 9th day of August, 1919.

OBELINE SOUCHEREAU,

Notary Public. [1049]

**Exhibit No. 5.**

In the United States District Court, in and for the  
District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J.  
G. HUNTINGTON and LENA J. FRIED-  
MAN,

Defendants.

**ANSWER.**

Come now the defendants in the above-entitled action and for answer to plaintiff's complaint on file herein, admit, deny and allege as follows, to wit:

**I.**

Respecting the allegations of paragraph I of said complaint, defendants have not sufficient knowledge or information upon which to base a belief.

II.

Defendants admit the allegations contained in paragraph II of plaintiff's complaint, except as to the defendant, J. G. Huntington, and deny that at the time of the commencement of this action, the said defendant, J. G. Huntington, was a citizen or resident of Lovelock, in said Pershing County.

III.

Respecting the allegations of paragraph III of said complaint as above stated, the defendants have not sufficient knowledge or information upon which to base a belief as to [1050] plaintiff being a citizen and resident of the State of Colorado and therefore denies that this is a controversy between citizens or residents of different states and admits that the amount in controversy herein exclusive of interest and costs, exceeds the sum of \$3,000.

IV.

Defendants admit the allegations contained in paragraph IV of plaintiff's said complaint.

V.

Respecting the allegations of paragraph V, the defendants allege that they have not sufficient knowledge or information upon which to base a belief and therefore deny that sometime immediately or otherwise preceding the making and execution of the contract of January 16, 1919, referred to in plaintiff's complaint as Exhibit "A," there had been brought to the attention of the plaintiff, a report of the said Howland Bancroft, a mining engineer, of and concerning the mines, mining prop-

erty and mining rights of the Nevada Humboldt Tungsten Mines Company, which said report showed the amount of development which then existed upon said mining property or that the same showed that about nine thousand (9,000) tons or any other number of tons of scheelite ore of an average of 1.75% or any other per cent or quality of tungstic acid had been developed or placed in sight or blocked out or ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company.

Admit that at all of the times mentioned in said complaint, the defendants, Murrish and Nenzel were directors of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, but deny that defendant Poole was at all or any of [1051] the times mentioned in plaintiff's complaint, or at all, a director of the said Tungsten Products Company and deny that said defendant Poole was at all the times mentioned in plaintiff's complaint, a director of the Nevada Humboldt Tungsten Mines Company and in this connection allege that the defendant Poole was not a director of said Nevada Humboldt Tungsten Mines Company at any time preceding July 2, 1919.

Deny that the defendant Poole had general charge of all mining or milling operations of said Nevada Humboldt Tungsten Mines Company or its subsidiary, the said Tungsten Products Company. Deny that the facts or truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company or of the development work



which had been performed or the new development work in process on and within said mines, mining claims, and mining rights of said Nevada Humboldt Tungsten Mines Company, or the amount of ore developed, placed in sight, blocked out or ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company at all or any of the times mentioned in said complaint, were peculiarly within the knowledge or information of any of the defendants except Poole, Nenzel and Friedman, and admit that in or about the month of March, 1919, plaintiff informed the defendants that he would not exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16, 1919.

Further answering said paragraph V. defendants deny that in or about the month of March, 1919, or at any other time, or at all, the defendants Poole, Murrish, Nenzel and Friedman or any of them acting for themselves or for all or any of their codefendants or otherwise, falsely or fraudulently, by means of letters or telegrams or by any other means whatsoever or at all, [1052] informed the plaintiff that further or new development work had been carried on within said mining property which had developed or placed in sight, blocked out or ready for mining, a large, or any quantity of scheelite ore of commercial or other value, capable of being concentrated or that the concentrates so returned were of great or any value.

Deny that on or about April 2, 1919, the defendants, Poole, Murrish and Nenzel came to Denver,

Colorado, for the purpose of inducing the plaintiff to make a new contract for the disposition of their respective interests or a part thereof or for the purpose of inducing the plaintiff to make any contract relative to said property.

Deny that said plaintiff relied upon any false or fraudulent representations of the defendants Poole, Murrish and Nenzel, or any of them, or of the other defendants or any of them, in entering into the alleged or any contract with the defendants, and in this behalf, the defendants allege that the plaintiff and the defendants, on or about April 2, 1919, entered into a supplemental contract whereby plaintiff undertook to raise sufficient money to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, for which said service the plaintiff was to receive 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company and 62% of one-half of the issued capital stock of the Mill City Development Company, which said contract was executed at Denver, Colorado; that the said plaintiff, his agents, mining engineers and representatives, at all times, commencing at a time shortly prior to January 16, 1919, and up to on or about June 1, 1919, had access to all and singular the mines, [1053] mining claims and mining rights of the said Nevada Humboldt Tungsten Mines Company; that at the time said supplemental contract was entered into by said

plaintiff on or about April 2, 1919, the said plaintiff had actual knowledge of all and singular what development work had been carried on and performed within the mines and mining claims and property of the said Nevada Humboldt Tungsten Mines Company; that at said time said plaintiff had actual knowledge of the quantity and concentrating value of what scheelite ores had been developed, placed in sight and blocked out, and the commercial value thereof; and that said plaintiff continued to and did have actual knowledge during the month of May, 1919, of all and singular the amount and character of said development work that had been carried on within said mines and mining claims and property of said company, and the amount of scheelite ore which had been developed, placed in sight and blocked out, and the commercial value thereof.

Further answering the allegations contained in said paragraph V, defendants deny that the defendants Poole, Murrish and Nenzel or any of them acting for themselves, or as the agents of and for the other defendants, or otherwise or at all for the purpose of inducing the plaintiff to enter into said supplemental contract of April 2, 1919, or for any other purpose or at all, then and there or at any time, falsely or fraudulently or with intention to deceive said plaintiff, or for any purpose whatsoever, represented to plaintiff that when the contract of January 16, 1919, was entered into, there was blocked out, developed or in sight in said mine, about 9,000 or any other number of tons of scheelite ore

carrying 1.75% or any quantity or value tungstic acid. [1054]

Deny that for the alleged or any purpose, said defendants then or there or at any time or at all, falsely or fraudulently or with intent to deceive said plaintiff, or for any purpose whatsoever, represented to plaintiff that since January 16, 1919, great or additional ore bodies of equal or any grade, had been developed or that a large or any amount of new development work had been done or performed on said mines or that there was then on said April 2, 1919, or at any time thereabouts or at all, blocked out, in sight or ready for mining or reduction into concentrates over 60,000 tons or any other amount of scheelite ore which would carry from 1.50% tungstic acid to 1.75% tungstic acid or that would carry any other value or quantity whatsoever. In this connection defendants allege that said plaintiff, his agents, mining engineer and representatives for the period of from shortly preceding the contract of January 16, 1919, up to and including on or about June 1, 1919, at all times had access to the mines, mining claims, and mining property of said Nevada Humboldt Tungsten Mines Company, and during said period and prior to the execution of the contract of April 2, 1919, as well as subsequent thereto, the said plaintiff personally visited, examined and inspected the quality and quantity of the scheelite ores in sight, blocked out and developed during said period of time and particularly the said period between January 16, 1919 and April 2, 1919, and had full, complete and ample



opportunity to see, appraise and understand all and singular, the conditions, amount of ore, quality and values there and all material matters pertaining to the subject matter. That during said period and particularly the period commencing on or about January 16, 1919, to or about April 2, 1919, the said plaintiff caused all and singular the said mining claims and the property of the said Nevada Humboldt Tungsten Mines Company, and the scheelite [1055] ores therein blocked out, in sight or developed, to be examined and inspected by plaintiff's mining engineer, selected by plaintiff for that purpose. Defendants deny that any representations made by said defendants or any of them to the plaintiff, were false or untrue and deny that any representation was at any time made by said defendants or any of them for the purpose of deceiving said plaintiff or for the purpose of causing him to undertake or carry out the provisions of said supplemental contract of April 2, 1919, or at all, save as to the truth and fact of said subject matter. Deny that in truth or in fact at said time, to wit: April 2, 1919, there was opened up and developed and in sight in said mine, not to exceed 19,000 tons of scheelite ore of an average value not to exceed 1.75% tungstic acid and in this connection, defendants allege that at said time there was opened up and developed, and in sight in said mine, quantities of scheelite or greatly in excess of 19,000 tons of an average value of 1.75% tungstic acid.

VI.

Respecting the allegations of paragraph VI of

plaintiff's complaint, the defendants deny that plaintiff relied upon or believed the said alleged or any false or fraudulent representations of the defendants, so alleged to have been made on or about April 2, 1919, or at all. That respecting the remaining allegations in said paragraph, defendants have no sufficient knowledge or information upon which to base a belief and therefore deny that said plaintiff, immediately or at all, gave practically or otherwise, his sole time or attention or any time or attention to the carrying out of the terms of said contract by which he was to raise for the benefit of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the Mill City Development Company, sufficient moneys for the payment of the debts of said corporations and their [1056] outstanding obligations, and in like manner and for the reasons last above stated, defendants deny that the plaintiff attempted or endeavored to carry out said provisions of said contract for the purpose of consummating the same or that said plaintiff *layed* out or expended for his traveling expenses to Lovelock, Nevada, San Francisco, California, New York City and various other places or to any places whatsoever for assay maps, surveys, expert services or mining examinations, reports, legal fees, organization fees, telegrams, telephones, or for any purpose whatsoever, the sum of \$8,820.31, or any other sum or amounts whatsoever.

## VII.

Respecting the allegations of paragraph VII of plaintiff's complaint, defendants have no sufficient

knowledge or information upon which to base a belief and therefore deny each and every allegation in said paragraph contained.

#### VIII.

Respecting the allegations of paragraph VIII of plaintiff's complaint, the defendants deny that on or about June 1, 1919, or at any other time, or at all, said plaintiff discovered the alleged or any falsity of the alleged, or any representations of the defendants or any of them. That as to each of the remainder of the allegations of said paragraph, defendants have no sufficient knowledge or information upon which to base a belief, and therefore deny all and singular said allegations.

#### IX.

Respecting the allegations in paragraph IX of the plaintiff's complaint, defendants deny that they, or any of them represented to said plaintiff on or about April 2, 1919, or at any time or at all that the net or other value of said ores over and above all expenses, costs, mining and transportation charges was [1057] \$320,000, or made any representations to said plaintiff respecting said subject matter other than according to the truth and fact thereof. Admit that the debts and obligations of said corporations on or about April 2, 1919, approximated \$150,000, and in this connection, defendants allege that the debts and obligations of said corporations at the time of the commencement of this suit, aggregated the sum of \$200,000, or thereabouts. Deny that defendants or any of them represented to said plaintiff that the net value of said mines

and the stock of said corporations, after the payment of all debts, would have been about the sum of \$170,000, or that any representations whatsoever were made relative to said subject matter. Deny that defendants or any of them made the alleged representations and therefore further deny that the net value of said mines and the stock of said companies after the payment of all debts would have been about \$170,000.

Deny that said corporations or any of them, were at the time of the commencement of this action, insolvent, or that the total value of their assets including all ores developed, in sight and available did not on or about April 2, 1919, or at the commencement of this action, exceed the sum of \$120,000. Deny that the ore in sight in said mine on said April 2, 1919, as well as at the time of the commencement of this action, had no greater value than \$70,000, and deny that the value of the stock which plaintiff alleges he would have received under the terms of said contract and to which he claims to be entitled had the alleged representations of defendants been true, would have been \$105,400 or any definite sum or amount whatsoever and in this connection defendants allege that the value of said stock, had plaintiff carried out his said agreement and received the same, is wholly [1058] conjectural, speculative and uncertain and dependent upon the market and other conditions wholly beyond the control of either plaintiff or defendants.

X.

Respecting the allegations of paragraph X of



said complaint, the defendants deny that by reason of or in consequence of the alleged or any false or fraudulent representations made by them or any of them to said plaintiff at the time or in the manner as alleged in said complaint or otherwise at any time or in any manner whatsoever, said plaintiff has been damaged in the sum of \$114,579.44 or in any amount and deny that for or by reason of any matter or thing whatsoever or at all, the said plaintiff has suffered loss or damage in the sum of \$114,579.44 or in any sum or amount whatsoever or at all.

WHEREFORE: defendants pray that the plaintiff take nothing by his said complaint and action. That said complaint be wholly disallowed and denied and that defendants have judgment against said plaintiff for all their costs and disbursements herein incurred or expended.

COOKE, FRENCH & STODDARD,  
Attorneys for Defendants.

State of Nevada,  
County of, —, —ss.

H. J. Murrish, being first duly sworn, deposes and says that he is one of the defendants named in the above-entitled action and makes this certification on behalf of each and all of his codefendants as well as on his own behalf; That he has read the [1059] foregoing action and knows the contents thereof, that the same is true of his own knowledge except as to those matters alleged on information and

belief and as to those matters he believes it to be true.

H. J. MURRISH.

Subscribed and sworn to before me this 17th day of March, 1920.

[Seal]

ROY A. STODDARD,

Notary Public. [1060]

**Exhibit No. 6.**

In the United States District Court in and for the District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. H.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. G. HUNTINGTON and LENA J.  
FRIEDMAN,

Defendants.

**REPLY.**

Comes now the plaintiff in the above-entitled action and for reply to the affirmative matter set forth and contained in the defendant's answer, admits, denies and alleges as follows, to wit:

**I.**

Replying to Paragraph V of defendants' answer, plaintiff denies that his agents, mining engineers and representatives, at all times, commencing short-

ly prior to January 16, 1916, and up to June, 1919, had access to all and singular, the mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, save and except that plaintiff admits that during said period, plaintiff on one occasion, and his representatives, on another, were permitted to go down in the mines, mining claims aforesaid, and the workings thereof; plaintiff denies that at the time said supplemental contract was [1061] entered into by plaintiff, on April 2, 1919, that the plaintiff had actual knowledge of all and singular, the development work that had been carried on and performed within the mines and mining claims and property of said Nevada Humboldt Tungsten Mines Company, but, on the contrary, plaintiff alleges at all times, immediately prior to January 16, 1920, and up to and including on or about the 25th day of May, 1919, plaintiff relied upon the representations and statements of defendants, their agents, employees, representatives and attorneys in fact as to all and singular, the condition of said mines, mining claims and mining rights and the development which had been carried on and performed within said mines and mining claims of the Nevada Humboldt Tungsten Mines Company; plaintiff denies that at all times or at said times, plaintiff had actual knowledge of the quantity and concentrating value of what scheelite ore had been developed, placed in sight and blocked out and the commercial value thereof, but on the contrary, plaintiff alleges that the only knowledge he had of and concerning the same,

between the 2d day of April and on or about the 25th day of May, was that which he received from and which was communicated to him by the defendants, their agents, employees, representatives and attorneys in fact. Plaintiff denies that he had and continued to have actual knowledge during the month of May of all and singular, the amount and character of said development work that had been carried on within said mines and mining claims and property of said company and the amount of ore which had been developed, placed in sight, blocked out and the commercial value thereof, but on the contrary, plaintiff alleges that he [1062] had no knowledge or information of the amount and character of the said development work or the amount or character of scheelite ore which had been developed, placed in sight, or blocked out, or the commercial value thereof, save and except as he received the same through representations and communications received by him from the defendants, their agents, employees, representatives and attorneys in fact, and save and except that plaintiff admits that on or about the 25th day of May, 1920, he did obtain, and thereafter had actual knowledge of the amount and character of said development work, the amount of scheelite ore blocked out, placed in sight and developed, and the commercial value thereof.

Further replying to said Paragraph V, plaintiff denies that he, his agents, mining engineers and representatives, for a period of from shortly pre-



ceding the contract of January 16, 1919, up to on

June

or about January 1, 1919, at all times had access to the mines and mining claims and mining property of the Nevada Humboldt Tungsten Mines Company; denies that during said period and prior to the execution of the contract of April 2, 1919, as well as subsequent thereto, plaintiff personally visited, examined and inspected the quality and quantity of scheelite ore in sight, blocked out and developed during said period of time and particularly the period between January 16, 1919 and April 2, 1919, save and except that plaintiff admits that between the 16th day of January, 1919 and the 27th day of January, 1919, plaintiff made a survey and examination of the ores blocked out and developed within the property aforesaid, and plaintiff admits that on or about the 25th day of May, he had another examination [1063] and report thereof made by a mining engineer for him of the quantity and quality of scheelite ore in sight, blocked out and developed in said mines and mining properties of the Nevada Humboldt Tungsten Mines Company.

Plaintiff also admits that on one occasion, between the 2d day of April, and the 25th day of May, he was in the mines and mining claims of the Nevada Humboldt Tungsten Mines Company but denies that he examined and inspected the quality and quantity of the scheelite ores in sight, blocked out and developed in said mines. On the contrary, plaintiff alleges that at said time, and at all other

times, he relied upon and believed the representations made to him by the defendants, their agents, representatives and attorneys in fact as to the quality and quantity of scheelite ore in sight, blocked out and developed in said mines at the times mentioned in said answer, and at all other times, save and except as reported to him by his mining engineer, at the times hereinbefore mentioned.

Plaintiff denies that he caused all and singular, said mining claims and property and the scheelite ores therein blocked out, in sight, or developed, to be examined and inspected by plaintiff's mining engineer, selected by plaintiff for that purpose, save and except as hereinbefore mentioned.

Plaintiff further denies that on April 2d, there was opened and developed and in sight in said mines and mining properties of the Nevada Humboldt Tungsten Mines Company, quantities of scheelite ore, greatly, or at all, in excess of 19,000 tons, of an average value of 1.75% tungstic acid. [1064]

## II.

Replying to the allegations in Paragraph IX of defendants' answer, plaintiff has not sufficient information with which to answer the allegations in said answer, wherein it is stated that the debts and obligations of said corporations at the time of the commencement of this suit aggregated the sum of \$200,000.00 or thereabouts, and therefore, upon said grounds, denies that at the time of the commencement of this suit, the aggregate debts and obligations of said corporations exceeded the sum of

\$200,000.00 or any other sum or amount larger or greater than \$165,000.00.

WHEREFORE, plaintiff prays judgment in his favor, according to the prayer of plaintiff's complaint.

HOYT, NORCROSS, THATCHER,  
WOODBURN & HENLEY,  
Attorneys for Plaintiff. [1065]

United States of America,  
State of Nevada,  
County of Washoe,—ss.

Geo. B. Thatcher, being first duly sworn, deposes and says: That he has read the foregoing reply and knows the contents thereof; that the same is true to the best knowledge, information and belief of affiant; that affiant makes this verification on behalf of the plaintiff for the reason that the plaintiff is absent from the State of Nevada, where his said attorneys reside.

GEO. B. THATCHER.

Subscribed and sworn to before me this 9th day of April, 1920.

BENJ. J. HENLEY,  
Notary Public in and for the County of Washoe,  
State of Nevada.

[Endorsed]: Original. No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Separate Answer of Nevada Humboldt Tungsten Mines Company et al. Filed

May 15th, 1920. T. J. Edwards, Clerk. Cooke, French & Stoddard, Attorneys for Defendants, Nevada Humboldt Tungsten Mines Company, et al. [1066]

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In the United States District Court, in and for the  
District of Nevada.

IN EQUITY—B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W.  
POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG, J. C.  
HUNTINGTON and LENA J. FRIEDMAN,  
Individually,

Defendants.

**Answer of Defendant W. J. Loring.**

Comes now the defendant W. J. Loring and files  
this his separate answer to the complaint herein:

I.

This defendant is without knowledge as to the  
allegations in paragraph one (1) of said complaint  
contained that plaintiff is and at all times in the



said complaint stated was a citizen and resident of the State of Colorado, residing in the City and County of Denver, in said State.

II.

This defendant is without knowledge as to the allegations in paragraph two (II) of said complaint that this action is a controversy between citizens and residents of different states.

III.

Defendant admits the allegations of paragraph three (III) of said complaint, but avers that the said [1067] contract Exhibit "A" expired by limitation on the 16th day of June, 1919.

IV.

Defendant admits the allegations of paragraph four (IV) of said complaint, but avers that the said contract, Exhibit "B" expired by limitation on the 16th day of June, 1919.

V.

This defendant admits that the supplemental contract annexed to plaintiff's complaint, marked Exhibit "C" and referred to in paragraph five (V) of said complaint was made and executed on the 2d day of April, 1919. But this defendant is without knowledge as to the other allegations of paragraph five (V).

VI.

This defendant is without knowledge as to the allegations of paragraph six (VI) of plaintiff's complaint.

VII.

This defendant is without knowledge as to the

allegations of paragraph seven (VII) of plaintiff's complaint.

Further answering the allegations of paragraph seven (VII) of plaintiff's complaint, this defendant avers that the plaintiff never at any time in accordance with or under the provisions of the contract of April 2d, 1919, copy of which is annexed to plaintiff's complaint, marked Exhibit "C," or otherwise secured by borrowing or otherwise for Nevada Humboldt Tungsten Mines Company and its allied companies a sum sufficient or any sum to liquidate the indebtedness of Nevada Humboldt Tungsten Mines Company and Tungsten Products Company and the proportion of indebtedness of the Mill City Development Company owed by the parties of [1068] the second part named in said contract, Exhibit "C" or any part or portion of said indebtedness, or of any or either of them, and denies that a sum sufficient to liquidate the said indebtedness, or any part or portion thereof, was ever secured as in said contract provided, or was ever in fact raised by the plaintiff or loaned to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the Mill City Development Company, or to any or either of them, or that a deposit of the amount necessary to liquidate the indebtedness as provided in said contract, Exhibit "C," or any part or portion of said indebtedness, was ever made in the Wells, Fargo Nevada National Bank, or in any other bank or place whatsoever.

VIII.

This defendant is without knowledge as to the allegations contained in paragraph eight (VIII) of plaintiff's complaint.

IX.

This defendant is without knowledge as to the allegations contained in paragraph nine (IX) of plaintiff's complaint to the effect that on or about the first day of June, 1919, plaintiff discovered the falsity of the representations of defendants in said paragraph referred to. This defendant is also without knowledge as to the allegations contained in paragraph nine (IX) of plaintiff's complaint that upon receipt of such information plaintiff communicate the same to his associates; and that associates of the plaintiff had agreed to furnish a large portion of the money necessary for the completion of the obligations of plaintiff under the terms of said contract of April 2d, Exhibit "C." This defendant admits that if it be true that [1069] the said plaintiff ever had any associates who had agreed to furnish him any moneys for the purpose of carrying out or completing any or all of his obligations under the terms of said contract, Exhibit "C," that the said associates withdrew from said undertaking on or about the first day of June, 1919, and refused to go into the same and refused to advance any money whatsoever for it. And in that connection this defendant avers that the plaintiff was never at any time in a position to furnish the money necessary for the

performance or completion of his obligations under the terms of said contract, Exhibit "C."

X.

Answering the allegations of paragraph ten (X) of plaintiff's complaint, this defendant avers that Exhibits "A," "B," and "C" annexed to plaintiff's complaint are copies of the only contracts with reference to the stock of the Nevada Humboldt Tungsten Mines Company which the plaintiff ever at any time had with the codefendants of this defendant or with any or either of them.

This defendant is also without knowledge as to the allegation in said paragraph ten (X) that before the expiration of said contract or on or about the — day of May, 1919, the plaintiff requested and demanded of said defendants that they organize a new corporation or amend the articles of the incorporation of Nevada Humboldt Tungsten Mines Company to comply with the provisions of the contract of April 2d, 1919, Exhibit "C."

Further answering the allegation in said paragraph ten (X) of plaintiff's complaint that said defendants wholly neglected and refused, and now continue and will continue to neglect and refuse, to perform said contract of April 2d, [1070] 1919, Exhibit "C," this defendant alleges that plaintiff prior to the 16th day of June, 1919, wholly failed, neglected and refused to perform the obligations upon his part to be kept and performed under and pursuant to the said contract of April 2d, 1919, Exhibit "C," and that said contract expired by limi-



tation in accordance with its terms, on June 16, 1919.

Further answering the allegations of said paragraph ten (X) to the effect that the parties of the second part to said contract, Exhibit "C," refuse and neglect and will continue to refuse and neglect to deliver to plaintiff sixty-two (62%) per cent of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) per cent of the stock of Tungsten Products Company and sixty-two (62%) per cent of one-half of the stock of the Mill City Development Company under the terms of said contract of April 2d, 1919, Exhibit "C" this defendant avers that the plaintiff wholly failed to negotiate the loan or to secure the money provided for in paragraph one (1) of said Exhibit "C" and that the said agreement pursuant to its terms expired as aforesaid by limitation on the 16th day of June, 1919. And this defendant further alleges that the agreement executed January 16th, 1919, Exhibit "B" also expired by limitation on said 16th day of June, 1919, and that from and after the said date said contracts were, and each of them was of no further force or effect.

Further answering the allegations contained in paragraph ten (X) of plaintiff's complaint, this defendant denies that the plaintiff has performed each and every of the covenants, obligations and agreements, or any covenant or obligation or agreement in said contract, Exhibit "C," to be by him kept and performed. [1071]

Further answering the allegations of paragraph ten (X) of plaintiff's complaint, this defendant is without knowledge as to the allegation to the effect that said stock of said corporations referred to in plaintiff's complaint at and before the commencement of this suit had no market value, and that the value thereof at the time the contract, Exhibit "C" was made and entered into between the plaintiff and said defendants depended upon the operation and development of the property acquired by the Nevada Humboldt Tungsten Mines Company, and particularly, the mines and mining property thereof. This defendant denies that the value of said stock cannot be exactly shown or definitely ascertained.

This defendant is without knowledge as to the allegation contained in said paragraph ten (X) of plaintiff's complaint to the effect that the continued working or development of said property, mines and mining claims, together with the matters and things in said complaint thereafter mentioned, would increase the value of said property. This defendant denies that the working or development of said property, mines and mining claims, together with the matters and things mentioned in plaintiff's complaint will increase the value of said stock.

Further answering the allegations of said paragraph ten (X), this defendant denies that the plaintiff has sustained, or could sustain any damage whatsoever by reason of the failure on the part of the defendants to transfer and deliver to said

plaintiff any stock pursuant to the contract, Exhibit "C," or that the plaintiff is entitled to the transfer or delivery to him of any stock whatsoever under the said contract. This defendant denies that the plaintiff is entitled to any damage whatsoever for or on account of the [1072] matters and things set forth in said complaint, but this defendant further avers that if it be true that plaintiff is entitled to damages for or on account of any matter alleged in his complaint, then it is not true that there is no method of ascertaining the amount of such damage or that the value of said stock is wholly conjectural, or speculative, or uncertain or dependent on many or varied conditions wholly beyond the control of either plaintiff or defendants. But in that behalf this defendant avers that the assets of said corporation now consist wholly of certain moneys heretofore paid to it and agreed hereafter to be paid to it by this defendant, and that the value of the said stock may therefore be readily ascertained.

## XI.

Answering the allegations of paragraph eleven (XI) this defendant avers that the bill referred to in said paragraph of plaintiff's complaint as reported out of committee recommends that a duty of nine dollars (\$9.00) per unit be placed on tungsten ores for a period of three (3) years and no longer. This defendant is without knowledge as to the allegation in said paragraph eleven (XI) of plaintiff's complaint that if said bill should

become a law, the ores in said properties containing the same will greatly increase in value, the exact amount of which is impossible of ascertainment.

## XII.

Answering the allegations contained in paragraph twelve (XII) of plaintiff's complaint, this defendant denies that on the 16th day of August, 1919, or at any other time or at all, the Nevada Humboldt Tungsten Mines Company and its subsidiary, the Tungsten Products Company, entered into [1073] a contract with this defendant, W. J. Loring, for the sale of all of its mines, mining property and mining claims, and particularly of its assets of every kind and character. On the contrary this defendant avers that on the 16th day of August, 1919, this defendant, W. J. Loring, entered into a contract with the defendant, Nevada Humboldt Tungsten Mines Company and the defendant, Tungsten Products Company, a full true and correct copy of which is annexed to this defendants' response to the order to show cause heretofore filed in this action and marked Exhibit 1 and which said exhibit is hereby referred to and made a part hereof. That it is not true, as alleged in plaintiff's complaint, that the said contract was for the sale of all the mines, mining property and mining claims and assets of every kind and character of said corporations, or any or either of them. This defendant avers that on the contrary there was exempted from the said sale evidenced by the



said agreement, Exhibit 1, a substantial portion of the personal property and assets of said corporation, and that the assets of said Nevada Humboldt Tungsten Mines Company so reserved and excepted from the said sale were of value of several hundred dollars.

This defendant admits that the said contract was made and executed pursuant to resolutions of the respective boards of directors of said Nevada Humboldt Tungsten Mines Company, and the defendant, Tungsten Products Company.

This defendant further admits that thereafter said defendant corporations called meetings of their respective stockholders for the purpose of ratifying and confirming the said contract with this defendant, W. J. Loring. But this defendant denies that said meetings of stockholders were held without adequate or proper notice thereof to the stockholders [1074] of said corporation or to the plaintiff. This defendant admits that the plaintiff on the 23d day of August, 1919, was a stockholder on the books of said corporation, and avers that on said date he held in his name five thousand (5,000) shares of the capital stock of said corporation. That the total number of shares of stock of said corporation issued and outstanding at all times herein mentioned had been one million (1,000,000) shares. That at said meeting of Nevada Humboldt Tungsten Mines Company referred to in paragraph twelve (XII) of plaintiff's complaint, there was present, in person or by proxy, stockholders of said corporation owning and holding upon the books

of said corporation 941,800 shares; and that the plaintiff, Taylor, had full knowledge and notice of said meeting and an opportunity to attend the same and did actually send a communication to the said meeting of said stockholders held on the said 23d day of August, 1919.

This defendant denies that the said meeting was held without the giving of any notice as required by the laws of the State of Nevada.

This defendant admits that 15 days' written notice of said meeting before the date of holding thereof was not given; but this defendant denies that 15 days' notice of such meeting was required by the laws of the State of Nevada.

This defendant further avers that at the said meeting of stockholders of said defendant Tungsten Products Company, there were present stockholders of said corporation owning and holding the entire issued capital stock of said corporation; and further that stockholders owning and holding 99,680 shares, being the total issued capital stock of said corporation out of a total authorized capitalization of 100,000 shares had [1075] theretofore on the 16th day of August, 1919, duly signed and executed a written ratification of said contract, Exhibit 1, a full, true and correct copy of which ratification is hereunto annexed marked Exhibit 3 and is hereby made a part hereof.

Defendant further alleges that on the 16th day of August, 1919, stockholders of the defendant, Nevada Humboldt Tungsten Mines Company made and executed a written authorization and ratifica-

tion of the said contract, Exhibit 1, a full, true and correct copy of which said authorization and ratification is hereunto annexed, marked Exhibit 2 and is hereby referred to and made a part hereof.

Further answering the allegations of paragraph twelve (XII) of the plaintiff's complaint, this defendant denies that the plaintiff promptly objected to said sale and to said contract, or that he promptly demanded the rescission and cancellation thereof, but, upon the contrary, this defendant avers that the plaintiff, well knowing that this defendant had entered into the said contract, Exhibit 1, and well knowing that this defendant was paying large sums of money to the said corporations pursuant to the terms of said contract, stood by and made no demand for the rescission or cancellation of said contract at any time prior to the 29th day of October, 1919, and not until after One Hundred Thousand Dollars (\$100,000.00) had been so paid by this defendant to the said defendant corporations.

This defendant admits that the officers, directors and stockholders of said corporation, Nevada Humboldt Tungsten Mines Company refused to set aside or cancel the said contract, Exhibit 1, or the conveyances or transfers of real and personal property executed pursuant thereto or to commence any action in any court for the [1076] rescission of cancellation thereof. But this defendant denies that said officers, directors and stockholders were guilty of any neglect whatsoever in so refusing or that the said conveyances were

pretended conveyances. On the contrary, this defendant avers that the said transaction was in every respect and particular fair and just and valid.

This defendant admits that on the 27th day of October, 1919, plaintiff, as a stockholder, commenced in this Court an action against the Nevada Humboldt Tungsten Mines Company wherein he seeks to have the said conveyance set aside. But this defendant avers that the defendant, Tungsten Products Company, is not a party to the said action.

This defendant denies that at the time he took the deeds and the said contract for said property from the defendant corporation this defendant had full or any notice of the alleged or any rights and equities, or rights or equities of plaintiff, in the properties so agreed to be conveyed and conveyed to this defendant, or in or to any shares of the capital stock of the defendant corporations, or any or either of them, or that this defendant took the said property with full, or any, notice of any rights and equities, or rights or equities whatsoever, of the plaintiff, Taylor; or that the plaintiff, Taylor, had any right or equity therein, or that this defendant was duly and regularly, or duly or regularly, or otherwise, informed of any rights and equities, or rights or equities, of the plaintiff, Taylor, before this defendant had performed any part or portion of said contracts, or at any other time or at all.



And in that behalf this defendant further avers that the plaintiff never at any time had had any right, title or interest of any kind or character, whatsoever, in or to [1077] the properties or assets, real and personal, belonging to the defendant corporations, or to any or either of them.

That the only contracts or agreements of any kind or character which the said plaintiff ever has had relating to the stock of defendant corporations or to the stock of any or either of them are the contracts, of which copies are annexed to his complaint; and that, as aforesaid, plaintiff having wholly failed and neglected to perform the obligations upon his part to be kept and performed within the time therein provided for, or otherwise or at all, said contracts expired by limitation on the 16th day of June, 1919, and that the said plaintiff, Taylor, has not since the said 16th day of June, 1919, had any rights or equities under said contract Exhibit "C" of any kind or character, whatsoever, in or to any shares of the capital stock of said defendant corporations, or any or either of them.

### XIII.

Answering the allegations of paragraph thirteen (XIII), this defendant admits that at the time plaintiff's complaint herein was filed, the defendant Nevada Humboldt Tungsten Mines Company, had called a meeting of stockholders to be held at Lovelock, Nevada, on April 19th, to further authorize and ratify the sale of the property of defendant, Nevada Humboldt Tungsten Mines Company, to this defendant, W. J. Loring, and to authorize the

execution of instruments of conveyance to this defendant by said Nevada Humboldt Tungsten Mines Company by way of further assurance of his title to the property and assets embraced in the said agreement, Exhibit 1, and already transferred and conveyed to this defendant in and by the deeds and transfers theretofore executed pursuant to the said agreement, Exhibit 1. That it is true, as alleged by the plaintiff, that the defendants, Nenzel, Poole, Murrish, Friedman, Jones, Hinch, Goodin, [1078] Twigg, Huntington, and Lena J. Friedman, as stockholders of said Nevada Humboldt Tungsten Mines Company, at the said meeting so called, if the said meeting had been free to proceed, would have voted all of their shares in favor of such authorization and ratification. But this defendant denies that they intended to vote, or at any meeting heretofore called would have voted, any shares of said Tungsten Products Company or of the Mill City Development Company; or that any shares of the Nevada Humboldt Tungsten Mines Company which they would have voted at said meeting would have included any stock of said corporation which is rightfully the property of the plaintiff, or that they would have voted at said or any meeting heretofore called, 62 per cent of the capital stock of the Tungsten Products Company or 62 per cent of one-half of the capital stock of the Mill City Development Company. And this defendant further denies that any stock in any or either of said corporations, other than the aforesaid five thousand (5000) shares of the capital stock of the Nevada Humboldt Tung-

sten Mines Company, is now, or ever has been rightfully or otherwise, the property of the plaintiff. And this defendant further denies that any action or transaction which would have taken place at said meeting, or any vote had thereat would have been or will be to the great or irreparable damage and injury, or damage or injury, of the plaintiff. That it was and is true that the said defendants who are stockholders in the said Nevada Humboldt Tungsten Mines Company, threaten to and would have voted the stock of said corporation at said meeting as aforesaid unless they had been restrained by the order of this Honorable Court. But in that connection this defendant avers that in obedience to the restraining order issued out of this Honorable Court [1079] in this section, said defendants refrained from doing any of the acts or things forbidden by the said order of this Honorable Court and adjourned said meeting until after the date fixed for the hearing of said order to show cause and have since adjourned the said meeting until after the date fixed for the hearing of the said order to show cause, to wit, until the 14th day of May, 1920, and that they will in obedience to said restraining order, continue to adjourn the said meeting from time to time until the said restraining order is discontinued. This defendant further avers in the same connection that stockholders representing 991,800 shares of the capital stock of said corporation were present in person or by proxy and answered the roll call at said meeting and were then and there anxious, ready and willing, and still are

anxious, ready and willing to further authorize, sanction and approve of the aforesaid transactions and to authorize the execution of any and all further assurance of the title of this defendant that may be proper.

Further answering the allegations of said paragraph thirteen (XIII), this defendant avers that it is just and equitable that the said meeting be held and that the said shares be voted in the manner aforesaid. In that connection, this defendant avers, upon his information and belief, that the transaction between him and the defendant corporations, evidenced by Exhibit 1 hereunto annexed, and the matters and things done pursuant thereto, are in every respect lawful and valid, and that in and by said transaction, deeds and bills of sale he acquired from the said Nevada Humboldt Tungsten Mines Company the title of all of the properties which the said corporation agreed to convey to him in and by the said contract, Exhibit 1. But this defendant is [1080] further advised and believes and therefore alleges that the plaintiff in and by the suit referred to in paragraph thirteen (XIII) of said complaint has called in question the validity of said transaction and of said conveyance upon the sole and technical ground that the said meeting, at which as aforesaid the said transaction with this defendant was authorized by stockholders owning and holding more than 94 per cent of the capital stock of said Nevada Humboldt Tungsten Mines Company was called upon five days' notice instead of upon fifteen days' notice. This defendant fur-



ther avers in the same connection that immediately after the execution thereof, he entered into possession under the contract Exhibit 1 and he and his successors in interest ever since have continued to be and now are in possession of the properties embraced in the said agreement of purchase and sale, Exhibit 1 and have paid out large sums of money in the protection and preservation of said properties and have paid to the defendant corporations, as called for by said contract, to the date hereof, the sum of Two Hundred Fifty-eight Thousand, Three Hundred Thirty-three Dollars and Thirty-three cents (\$258,333.33); and that more than Two Hundred Thousand Dollars (\$200,000) of said money has been used and employed by the defendant corporations in the payment of their debts and obligations. That among the obligations so paid with the said money is a claim of the plaintiff, and that plaintiff, well knowing the source of said money and that the same came from this defendant, has received and accepted from the defendant Nevada Humboldt Tungsten Mines Company, out of the moneys so paid by this defendant the sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7334.04).

That the plaintiff herein and by the said suit [1081] referred to in Paragraph thirteen (XIII) of his complaint calls in question and so casts a cloud upon the title so acquired from the defendant corporations by this defendant, and that if the said vote is had and taken by the said stockholders at the said meeting, said question will be set aside

and said cloud will be removed in accordance with the just rights and equities of this defendant.

This defendant is without knowledge as to the allegations in said Paragraph thirteen (XIII) of plaintiff's complaint which sets forth that the effect of said sale of said property of said Nevada Humboldt Tungsten Mines Co. will be practically to dissolve the same and that unless restrained by order of this Honorable Court, the defendant corporations and their officers and directors will distribute to the stockholders the proceeds from the sale of said mining property and assets to be received from this defendant under the terms of said contract Exhibit 1 (which the plaintiff erroneously avers was executed on the 16th day of August, 1918).

This defendant further avers that he is without knowledge as to whether or not, if such distribution is had, it will be to the great and irreparable damage of the plaintiff. But this defendant denies that it will greatly, or at all, depreciate the value of any stock to which he is entitled under the terms of said contract of April 2d, 1919, Exhibit "C," and this defendant denies that the plaintiff is entitled to any stock under the terms of said contract.

This defendant is without knowledge as to whether the distribution of the proceeds of such sale, if permitted to be made to the stockholders as so threatened, will be a depletion of the capital of said corporation or that the [1082] plaintiff is informed or believes that such distribution would be in viola-

tion of the laws of the State of Nevada or of the rights of the plaintiff as a stockholder in said corporations.

This defendant admits that he will accept a ratification of the aforesaid transaction and such deeds and conveyances or instruments of conveyance as may be made pursuant thereto, if the same shall be had at the said meeting; but this defendant denies that such ratification will cast a cloud upon the title of defendant corporation of, in and to said mine and mining property, or that the said defendant corporations, or either of them, now have or at any time since the 23d day of August, 1919, have had any title whatsoever, in or to said mine, mining claims and mining property. And this defendant further denies that such ratification, deeds and conveyances or instrument of conveyance, or either or any of them, will greatly, or otherwise, depreciate the value of any shares of stock which plaintiff now owns in the defendant corporations, or either of them; and this defendant further denies that plaintiff is entitled to receive, under and by virtue of the terms of said contract, Exhibit "C," any shares of stock whatsoever, of the defendant corporations, or either of them.

This defendant further denies that he will under and by virtue, or under or by virtue, of any instrument or instruments of conveyance that will be authorized and executed at and by the authority of said meeting, so called for April 19, 1920, enter in and upon said mines and mining claims, and work and extract therefrom the valuable minerals therein

contained, or that any entry upon said property or any work performed thereon by or under this defendant will be to the great, or any, damage or injury to the plaintiff [1083] as a stockholder in the said corporation, or that the same would damage or injure or depreciate the value of any stock which the plaintiff is entitled to receive. This defendant further avers in this connection that he and his successors in interest entered into possession of said mining properties and all of them embraced in said contract, Exhibit 1, on or about the 16th day of August, 1919, and ever since have continued to be and now are in possession thereof, with full right to work and extract therefrom the valuable minerals therein contained.

This defendant further denies that at the said meeting the defendant corporations, or any or either of them would permit the defendants named in paragraph thirteen (XIII), or any or either of them, to vote any shares of the capital stock of said corporation, or any or either of them, which are justly or otherwise the property of plaintiff, or that 62 per cent of the shares of the capital stock of any or either of said corporations is justly the property of the plaintiff, or that any vote had or permitted at said meeting will be to the great and irreparable, or great or irreparable, or any, injury or damage of the plaintiff.

#### XIV.

Answering the allegation of paragraph fourteen (XIV) of plaintiff's complaint, this defendant is without knowledge as to the allegations of said



paragraph. But this defendant avers that if in truth and in fact that plaintiff did make the offer therein alleged, that the said offer was not a due offer of performance as called for under the provisions of the contract, Exhibit "C" and was without any validity, force or effect whatsoever.

Further answering the said paragraph fourteen (XIV) [1084] this defendant avers that the alleged offer of the plaintiff if in truth it was ever made, was never accepted by the parties of the second part to the contracts Exhibits "A," "B," and "C," or by the parties of the second part to any or either of said contracts.

XV.

This defendant is without knowledge as to the allegations of paragraph fifteen (XV) of plaintiff's complaint, but in that behalf this defendant avers, upon his information and belief, that the plaintiff did advance certain sums of money to one or more of the defendant corporations, all of which were repaid to the plaintiff prior to August 16, 1919 with the exception of the sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7,334.04) or thereabouts, which was in dispute between the plaintiff and the defendants Nevada Humboldt Tungsten Mines Company and Tungsten Products Company.

That heretofore and on the 16th day of August, 1919, the plaintiff brought an action in this court against both of said defendant corporations to recover the said sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7,334.04),

said action being numbered "Docket 2262" in the records of this court. That thereafter such proceedings were had that the plaintiff received in payment of his claim the sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7,334.04). That the money so received and accepted by said plaintiff in satisfaction of his said claim was a part and portion of the money paid by this defendant to the defendant corporations under and pursuant to the said contract Exhibit 1 as a part of the purchase price of said properties pursuant thereto, and that said amount was received and accepted by the plaintiff with full notice and knowledge of the source of said money [1085] and with full knowledge that the same had been paid by this defendant as a part of the purchase price of said properties pursuant to said contract Exhibit 1.

#### XVI.

Answering the allegations of paragraph sixteen (XVI) this defendant denies that plaintiff has no plain, speedy or adequate remedy at law, and in that behalf this defendant avers that the said plaintiff, if he has any just cause or grievance against the defendants, has a plain, speedy and adequate remedy at law in an action for damages heretofore brought by him in this Honorable Court and now pending therein, numbered on the records of this court, "Docket 2263." That a full, true and correct copy of plaintiff's complaint in said action is hereunto annexed, marked Exhibit 6 and is hereby referred to for further particulars. That the defendants therein have filed an answer in the said

action and that the plaintiff has filed a replication therein, and that the said action is still pending and undetermined.

Further answering the allegations of said paragraph sixteen (XVI) of plaintiff's complaint, this defendant denies that irreparable, or any, damage or injury will result, or would have resulted, to the plaintiff if a temporary restraining order had not been issued without notice in this action.

This defendant further denies that any conveyances ratifying and confirming the contracts and conveyances heretofore executed to this defendant, which the said stockholders would have authorized or which they will hereafter authorize if not restrained and enjoined by this Honorable Court, would have constituted or will constitute a cloud upon the property of Nevada Humboldt Tungsten Mines Company. And this defendant further denies that it would be necessary for any [1086] person or corporation to commence various and sundry proceedings in the courts for the removal of the same, or that any proceedings in the court would be rendered necessary, or that the cost and expense thereof would be impossible of ascertainment, or that it was necessary or proper that a restraining order should have been issued in this action restraining the defendants as requested by the plaintiff, or that the said restraining order heretofore issued herein should be continued in force.

And for further and separate answer and defense, this defendant avers:

## I.

That while it is true that on the 16th day of January, 1919, the plaintiff, Taylor, entered into the contract concerning stock of the Nevada Humboldt Tungsten Mines Company, a copy of which is annexed to plaintiff's complaint marked Exhibit "B" and while it is also true that plaintiff on the 2d day of April, 1919, entered into the contract concerning stock of said corporation, a copy of which is annexed to plaintiff's complaint marked Exhibit "C," nevertheless it is also true that both of said contracts wholly expired by limitation and became null and void on or before the 16th day of June, 1919.

In that behalf this defendant avers:

1. That the said agreement of April 2d, 1919, contains the following provisions among others:

"It is further mutually covenanted and agreed that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided for in paragraph one hereof."

"Time is of the essence of this agreement." That the foregoing provisions of said contract, Exhibit "C," were never changed or modified, nor was the time limit therein [1087] provided for ever extended.



2. That in and by said contract Exhibit "C," the said Taylor undertook, among other things, to secure by borrowing on or before June 16th, 1919, for the Nevada Humboldt Tungsten Mines Company and its allied companies a sum sufficient to liquidate the indebtedness of said Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the proportion of the indebtedness of the Mill City Development Company which the parties of the second part to the said agreement then owed, said indebtedness being then estimated to be the sum of Two Hundred Twenty Thousand Dollars (\$220,000).

3. That it was further provided in and by said contract Exhibit "C," that when and if the plaintiff, Taylor, should secure the said sum sufficient to liquidate the entire indebtedness as above provided, then the parties of the second part to said agreement would transfer and deliver to him in full payment for services rendered in securing the aforesaid sum of money sixty-two (62) per cent of the issued capital stock of Nevada Humboldt Tungsten Mines Company, sixty-two (62) per cent of the issued capital stock of the Tungsten Products Company and sixty-two (62) per cent of one-half of the issued capital stock of the Mill City Development Company.

4. That it was further provided in said Exhibit "C" that a deposit of the amount necessary to liquidate the indebtedness as in said contract, Exhibit "C" set forth in the Wells, Fargo Nevada National Bank should be sufficient evidence of the

performance of the conditions called for by said contract to entitle the said Taylor to a transfer and delivery of the aforesaid shares of stock in said respective corporations.

5. That the said plaintiff did not, as provided for in said agreement, Exhibit "C," secure by borrowing or otherwise [1088] for the Nevada Humboldt Tungsten Mines Company and its said allied companies any sum of money whatsoever, and that the said 16th day of June, 1919, came and went without any performance whatsoever by the plaintiff, Taylor, of his aforesaid undertaking to secure the money provided for in said Exhibit "C."

6. That thereafter and on the 9th day of August, 1919, the said David Taylor made oath to a complaint against the parties of the second part to said contract, Exhibit "C," wherein he alleged among other things, that he had been induced to enter into the said contract, Exhibit "C" by reason of the false and fraudulent representations of the parties of the second part to said instrument. And he further alleged on oath in said complaint that during all of the time from April 2d, to June 1st, 1919, he had given his time and efforts to the consummation of said contract, Exhibit "C," and that he had expenses upwards of Eight Thousand Dollars (\$8000) for traveling expenses, assays, maps, surveys, expert services, mining examinations, reports, legal fees, examination of titles, preliminary work, the organization of corporations, and for telegraph and telephone; and that as a result of the said expenditure of time and efforts, he suc-

ceeded and had pledged himself and others associated with him an amount sufficient to meet any and all obligations of his under said contract, Exhibit "C" and sufficient to enable him to receive the shares of stock in the several corporations as herein provided for. But said plaintiff, Taylor, further alleged under oath in said complaint that on the 1st day of June, 1919, he had discovered the falsity of the representations of the defendants, and that thereupon he had communicated the same to his associates who had agreed to furnish a large portion of the money necessary for the completion of the obligations of plaintiff under said contract, and that thereupon his said associates withdrew [1089] from said undertakings and refused to go into the same or advance any money, whatsoever, for it.

7. In the same complaint said plaintiff, Taylor, further made oath that the said Nevada Humboldt Tungsten Mines Company and its said allied companies were each and all insolvent, that their debts and obligations were about One Hundred and Fifty Thousand Dollars (\$150,000), and that the total value of their assets, including all ores developed, did not on the 2d day of April, 1919, or on the said 9th day of August, 1919, exceed the sum of One Hundred Twenty Thousand Dollars (\$120,000). And that said Taylor further made oath therein that had the representations of the defendants been true, the value of the sixty-two (62) per cent of the shares of stock in the respective corporations to which he would have been entitled under the said Exhibit "C" would have been One Hundred Five

Thousand Four Hundred Dollars (\$105,400). And the said Taylor further therein made claim under oath that because of the alleged false and fraudulent representations so alleged by him, he had been damaged in the total sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 Dollars (\$114,579.44); said claim being made up of the aforesaid sum of One Hundred Five Thousand Four Hundred Dollars (\$105,400) and the moneys so alleged to have been expended by him in his efforts to carry out the obligations imposed upon him by the said Exhibit "C."

8. That thereafter the said David Taylor caused said complaint to be filed in this Honorable Court all of which more fully appears from the said complaint in the said action which said action is still pending in this Honorable Court and is numbered "Docket 2263" upon its records, to which complaint reference is hereby made. [1090]

9. That after the said complaint had been filed, this defendant on the 16th day of August, 1919, made and entered into a contract with the Nevada Humboldt Tungsten Mines Company and others, a full, true and correct copy of which is annexed to this defendant's response to the order to show cause and is marked Exhibit 1 and is hereby referred to and made a part hereof.

10. That in and by said contract, Exhibit 1, said Nevada Humboldt Tungsten Mines Company agreed to sell to this defendant, and this defendant agreed to purchase from said corporation, all of its property and assets, with certain exceptions, all of which



more fully appears from the said contract, Exhibit 1.

That this defendant agreed to pay for said property a total of Three Hundred Thirty Three Thousand Three Hundred Thirty-three and 33/100 Dollars (\$333,333.33) in installments as follows:

\$50,000 on or before the 1st day of September, 1919;

\$50,000 on or before the 1st day of October, 1919;

\$50,000 on or before the 15th day of November, 1919;

\$50,000 on or before the 27th day of December, 1919;

\$23,333.33 on or before the 4th day of February, 1920;

\$25,000 on or before the 4th day of May, 1920;

\$25,000 on or before the 4th day of August, 1920;

\$25,000 on or before the 4th day of November, 1920;  
and

\$25,000 on or before the 4th day of February, 1921.

11. That on said 16th day of August, 1919, stockholders owning and holding nine hundred ninety-one thousand eight hundred (991,800) shares of the capital stock upon the books of the Nevada Humboldt Tungsten Mines Company out of a total capitalization of one million (1,000,000) shares, made and executed a written instrument of ratification of said contract, Exhibit 1, a full, true and correct copy of which ratification is hereunto annexed, marked Exhibit 2 and is hereby made a part hereof.  
[1091]

That on the same day the stockholders owning and holding all of the issued capital stock of the Tungsten Products Company made and executed a written ratification of the said contract, Exhibit

1, a full, true and correct copy of which ratification is hereby annexed, marked Exhibit 3 and is hereby made a part hereof.

That also on the same day at a meeting of the stockholders of said Tungsten Products Company, at which meeting all of the stockholders of said corporation were present, a resolution was duly passed and adopted by a vote of the stockholders owning and holding all of the capital stock of said Tungsten Products Company, authorizing, ratifying, confirming and approving the transfer of the properties of said corporation to this defendant in accordance with the terms and provisions of said instrument, hereunto annexed, marked Exhibit 1.

That thereafter a meeting of the stockholders of said Nevada Humboldt Tungsten Mines Company was called to be held on the 23d day of August, 1919. That notice of said meeting and of the purposes and objects thereof was given to each and all of the stockholders of said corporation in the manner provided for in the by-laws of said corporation five days prior to the date on which the said meeting was held. That at said meeting there was present in person or by proxy stockholders representing and owning nine hundred forty one thousand eight hundred (941,800) shares out of a total of one million (1,000,000) shares of the capital stock of said corporation. That although the plaintiff Taylor, did not attend the said meeting in person, he nevertheless knew that the same was to be held at said time and place and caused a communication to be delivered to said meeting.

That at said meeting resolutions authorizing the sale [1092] and transfer provided for in Exhibit 1 were passed and adopted by stockholders owning and holding nine hundred forty one thousand eight hundred (941,800) shares out of the aforesaid total capitalization of one million (1,000,000) shares. Full, true and correct copy of said resolutions are hereunto annexed, marked Exhibit 4 and are hereby referred to and made a part hereof.

12. That thereafter and pursuant to the said resolutions, deeds and bills of sale were duly executed to this defendant in accordance with said contract, Exhibit 1, transferring and conveying to this defendant the property, real and personal, so agreed to be transferred and conveyed to him by the aforesaid agreement, Exhibit 1.

13. That contemporaneously with the execution and delivery of said deeds and bills of sale this defendant executed and delivered to Nevada Humboldt Tungsten Mines Company and Tungsten Products Company a mortgage as called for by the said Exhibit 1. A copy of said mortgage is hereunto annexed marked Exhibit 5 and is hereby referred to and made a part hereof.

14. That pursuant to the terms and provisions of said contract, Exhibit 1, this defendant entered into possession of all of the property, real and personal, which he agreed to purchase under the terms of said contract, Exhibit 1, and he and his successors ever since on or about the 16th day of August, 1919, have continued to be and now are in possession thereof.

15. That pursuant to the terms of said contract, Exhibit 1, and said mortgage, Exhibit 5 this defendant has already paid, or caused to be paid, to the said Nevada Humboldt Tungsten Mines Company and Tungsten Products Company [1093] the following sums of money at the following times:

\$50,000 on the 1st day of September, 1919;

\$50,000 on the 1st day of October, 1919;

\$50,000 on the 15th day of November, 1919;

\$50,000 on the 27th day of December, 1919;

\$33,333.33 on the 4th day of February, 1920;

\$25,000 on the 4th day of May, 1920;

\$25,000 on the 4th day of August, 1920.

16. That the said sums of money so paid pursuant to said contract, Exhibit 1, and said mortgage, Exhibit 5, aggregating Two Hundred Eighty Three Thousand Three Hundred Thirty-three and 33/100 Dollars (\$283,333.33), have been received by said corporation and that more than Two Hundred Thousand Dollars (\$200,000) of said sums has been actually used by them in the payment of their debts and obligations, and that upwards of One Hundred Thirty-three Thousand Two Hundred Sixty-nine and 99/100 Dollars (\$133,269.99) of said amount has been actually used by said Nevada Humboldt Tungsten Mines Company in the payment of its debts and obligations.

## II.

This defendant further represents to this Honorable Court that in equity and good conscience plaintiff is estopped by his acts and conduct from objecting to the execution of instruments of further



assurance to this defendant or from in any manner questioning the validity of said agreement, Exhibit 1 or the title whereunder this defendant acquired said real and personal property and the possession thereof. In that behalf this defendant avers:

1. That among the debts and obligations paid out of moneys received as aforesaid by Nevada Humboldt Tungsten Mines Company was a claim alleged by the plaintiff, Taylor, to be due and owing from the said corporation to his, amounting to Nine Thousand One Hundred Seventy-nine & 44/100 Dollars [1094] (\$9,179.44). That the said plaintiff, Taylor, received and accepted in full settlement of his said claim the sum of Seven Thousand Three Hundred Thirty-four and 04/100 Dollars (\$7334.04) which amount was paid to him as follows: \$1,000 on the 8th day of January, 1920, and \$6,334.04 on the 13th day of February, 1920. That said Taylor, at the time of receiving said payments, well knew that the source of said money was the said transaction, and that this defendant, Loring, had paid in, and caused to be paid in, the said money to the said corporation on account of the purchase price of said properties as provided for in the agreement of August 16, 1919, (Exhibit 1), and in the mortgage, (Exhibit 5) made in pursuance thereof.

### III.

Further answering the said complaint, this defendant respectfully represents.

That the plaintiff, Taylor, prior to the purchase by this defendant of said properties and prior to the

execution of Exhibit 1 and prior to the payment of any moneys by this defendant on account of the purchase price thereof, had elected to rely upon and pursue a remedy concerning the matters and things now complained of by him, which was wholly inconsistent with the remedy which he seeks in this action and which in equity and good conscience prevents him from seeking the relief prayed for in this action. In that behalf this defendant avers:

1. That on or about the 10th day of August, 1919 and after the period fixed in the contract, plaintiff's Exhibit "C" for the expiration of said contract by limitation, and before this defendant entered into the contract, Exhibit 1, plaintiff, Taylor, with full knowledge of all of the matters now relied upon and alleged by him in his complaint in his present action having taken place prior to the said 10th [1095] day of August, 1919, declared and represented to this defendant, W. J. Loring, that he, said Taylor, had a case either for compelling the present stockholders of the Nevada Humboldt Tungsten Mines Company to assign to him control of the stock of said corporation, or as an alternative remedy, an action for heavy damages against the said stockholders.

2. That thereafter on the 16th day of August, 1919, the said plaintiff elected to and did pursue the aforesaid alternative remedy of seeking heavy damages against the parties of the second part to the said contract, Exhibit "C," by filing in this Honorable Court the aforesaid complaint against the said parties of the second part to said contract,

plaintiff's Exhibit "C," wherein and whereby he set forth the identical matters and things set forth in paragraphs four (IV) to seven (VII) inclusive, of his complaint herein, the substance of which allegations is that the defendants had agreed to convey to him sixty-two (62) per cent of the stock of said Nevada Humboldt Tungsten Mines Company and other stock in consideration of the performance of certain services to be rendered by him, and that he had proceeded to render the agreed services; but that while rendering said services he had discovered that the defendants in said action had falsely and fraudulently represented the value of said property; and that he and his associates had thereupon declined to furnish the money called for by plaintiff's Exhibit "C"; that the Nevada Humboldt Tungsten Mines Company was and is insolvent and its stock valueless; and in lieu of said stock he asked damages to the amount of One Hundred Five Thousand Dollars (\$105,000) which sum he alleged would have represented the value of sixty-two (62) per cent of stock according to his estimate of the value thereof, if the alleged representations made to him had been true.

That the fact that plaintiff had made said election [1096] was known to this defendant prior to the payment by this defendant of any part of the purchase price of said properties.

3. This defendant further alleges that the said act of the plaintiff, Taylor, in filing the said complaint was done with full knowledge of his, said Taylor's rights and of all of the facts, and that his

election to insist upon the said remedy of damages involved a negation and repudiation of the remedy which he seeks in this action.

4. This defendant, W. J. Loring, further avers that the meeting of the stockholders of said Nevada Humboldt Tungsten Mines Company called for April 27th, 1920, in deference to the restraining order of this Court was adjourned to meet again on the 14th day of May, 1920, and has been and is being duly continued from time to time to await the action of this Honorable Court. That it is just and equitable that the said meeting of stockholders should proceed to act favorably upon the matters and things for which it has been called and to authorize and direct the execution of additional deeds or bills of sale by way of further assurance of the title of this defendant. And in that behalf this defendant avers that the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company were on the 16th day of August, 1919, indebted in a sum in excess of Two Hundred Thousand Dollars (\$200,000) and that they were unable to meet their obligations and that on the said day the plaintiff, Taylor, had made oath and had represented to this Court that the said Nevada Humboldt Tungsten Mines Company was insolvent and in substance had stated on oath that its stock was without any value whatever. That under the said conditions the Board of Directors of said corporation duly authorized and caused said corporation to enter into a contract for the transfer of certain of its properties, real and personal, to this defendant [1097]



Loring, as more fully appears by said contract, Exhibit 1. That although the sale and transfer, so authorized to be made to this defendant, embraced by far the greater portion of the property and assets of said corporation, nevertheless it is the fact that it did not embrace all of the property, but excepted and excluded from said transaction property belonging to the Nevada Humboldt Tungsten Mines Company of the value of several hundred dollars.

5. That the said sale to this defendant was absolutely necessary in order to pay the debts and obligations of said corporation and to save the said Nevada Humboldt Tungsten Mines Company from bankruptcy and financial ruin. That the price agreed upon was at least the full value of said properties embraced therein and was a sum which was more than One Hundred Seventy Five Thousand Dollars (\$175,000) in excess of the amount which the plaintiff, Taylor, stated on oath on said day was the value of said properties.

6. That, as this defendant is advised and believes and therefore avers that the circumstances under which the said sale and transfer to this defendant was made were such that the said sale did not require any ratification by the stockholders of Nevada Humboldt Tungsten Mines Company, and that said transaction is wholly unaffected by Section 96 of the General Corporation Laws of Nevada of 1903 as amended in 1913, referred to in plaintiff's complaint, wherein it is provided that a corporation may sell and dispose of all of its

property and assets when authorized by sixty (60) per cent of its stockholders at a meeting called upon fifteen days' notice. That nevertheless the said transaction was assented to, ratified and approved in the manner hereinabove set forth by stockholders of said corporation representing nine hundred forty-one thousand eight [1098] hundred (941,800) shares out of a total of one million (1,000,000) shares of capital stock of said corporation. And this defendant avers that stockholders of said corporation owning and holding more than ninety-nine (99) per cent of all of the shares of capital stock of said corporation are ready, anxious and willing now at the said adjourned meeting (which has been called upon fifteen days' notice) to further authorize, sanction, ratify and approve the said transaction with this defendant and to authorize and direct the execution and delivery of such further deeds and bills of sale as may be proper by way of further assurance.

7. That, as this defendant is advised, it is not necessary or essential to the title of this defendant or his successors that such meeting be held or such authorization or ratification had; but nevertheless this defendant avers that it is proper and desirable that the said meeting be held and that the execution of further assurances to this defendant or his successors be at such meeting authorized and sanctioned, forasmuch as it is the fact that the said David Taylor, who holds five thousand (5,000) shares upon the books of the Nevada Hum-

boldt Tungsten Mines Company has questioned and is questioning the validity of the bill of sale and deeds received by this defendant from the said Nevada Humboldt Tungsten Mines Company upon the technical ground that the said transaction was not authorized at a meeting held upon fifteen days' notice and said contention tends to cloud the title to said land and to injure this defendant and his successors.

#### IV.

This defendant further alleges:

1. That the plaintiff, Taylor, has been guilty of gross laches in the matter of filing his complaint in this [1099] action. And in that behalf this defendant avers that well knowing that on the 16th day of August, 1919, the said Nevada Humboldt Tungsten Mines Company entered into said contract with this defendant, marked Exhibit 1, and well knowing that the said contract and the mortgage given pursuant thereto called for payments of money at stated times under penalty of forfeiture by this defendant, and well knowing that the outstanding liabilities and obligations of said Nevada Humboldt Tungsten Mines Company were such that the moneys called for by said contract to the extent of at least Two Hundred Thousand Dollars (\$200,000) would be required and would be immediately used when and as paid in by said defendant in discharge of obligations of said corporation and of said Tungsten Products Company, its subsidiary corporation, nevertheless

said plaintiff wilfully and deliberately stood by and wilfully failed and neglected and refrained from beginning said suit until a total sum of Two Hundred Thirty Three Thousand Three Hundred Thirty Three and 33/100 Dollars (\$233,333.33) had been paid under the said contract and until he well knew that debts exceeding Two Hundred Thousand Dollars (\$200,000) of said Nevada Humboldt Tungsten Mines Company and its said subsidiary corporation, Tungsten Products Company, had been paid out of moneys so paid in by said defendant.

2. That in equity and good conscience plaintiff is estopped and debarred by his laches and conduct aforesaid from maintaining this action or from obtaining any relief thereunder, and particularly, from obtaining any injunction under the order to show cause herein which will prevent said Nevada Humboldt Tungsten Mines Company from giving to this defendant further assurance of the title to the real and personal property pursuant to the said agreement, Exhibit 1. [1100]

V.

This defendant avers that said bill is wholly without equity, and moves that the same be dismissed for want of equity.

WHEREFORE, this defendant prays that the plaintiff take nothing by his action; that the said complaint be dismissed for want of equity, and that this defendant have and recover of and from the plaintiff his costs of suit herein together with



such further or different relief as is meet in the premises and conformable to equity.

JOHN F. DAVIS and

CHARLES S. WHEELER, and

CHARLES S. WHEELER, Jr.,

Solicitors for Defendant, W. J. Loring. [1101]

State of California,

City and County of San Francisco,—ss.

W. J. Loring, being first duly sworn deposes and says: That he is one of the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and that as to those matters, he believes it to be true.

W. J. LORING.

Subscribed and sworn to before me this 4th day of September, 1920.

W. W. HEALEY,

Notary Public in and for the City and County of San Francisco, State of California. [1102]

### **Exhibit No. 2.**

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the

State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Nevada Humboldt Tungsten Mines Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Nevada Humboldt Tungsten Mines Company.

IN WITNESS WHEREOF, we have hereunto set our hands this sixteenth day of August, A. D. 1919.

L. A. Friedman	owning	91,640 shares
Lena J. Friedman	owning	250,000 shares
R. Nenzel	owning	102,000 shares
G. K. Hinch	owning	10,000 shares
H. J. Murrish	owning	101,000 shares
C. H. Jones	owning	100,000 shares
John G. Huntington	owning	50,000 shares

By R. Nenzel, Atty. in fact.

Frank Carlstrom	owning	60,000 shares
C. W. Poole	owning	219,160 shares
V. A. Twigg	owning	3,000 shares
J. T. Goodin	owning	5,000 shares

I, R. Nenzel, Secretary of Nevada Humboldt Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders [1103] of the Nevada Humboldt Tungsten Mines Company are the owners of more

than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Nevada Humboldt Tungsten Mines Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

[Corporate Seal]      R. NENZEL, [1104]  
Secretary of Nevada Humboldt Tungsten Mines  
Company, a Nevada Corporation.

### **Exhibit No. 3.**

KNOW ALL MEN BY THESE PRESENTS:  
That the undersigned, being the owners of more than ninety-five per cent (95%) of the total authorized capital stock of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby approve and ratify the foregoing and attached contract made and entered into by said Tungsten Products Company on the one part and W. J. Loring on the other part; and we do hereby ratify, approve and confirm the acts of the President and Secretary of the above corporation in executing the said contract on behalf of said Tungsten Products Company.

IN WITNESS WHEREOF, we have hereunto set our hands this, the sixteenth day of August, A. D., 1919.

L. A. Friedman	owning	1,000 shares
L. A. Friedman, Trustee,	owning	94,680 shares
H. J. Murrish	owning	1,000 shares
R. Nenzel	owning	1,000 shares
C. H. Jones	owning	1,000 shares
John G. Huntington	owning	1,000 shares

R. Nenzel, Atty. in fact.

I, R. Nenzel, Secretary of the Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, do hereby certify that the persons whose names are signed to the attached ratification of stockholders of Tungsten Products Company are the owners of more than ninety-five (95%) per cent of the total authorized capital stock of said corporation standing in their names on the books of said corporation on this date and are each the owners of the number of shares set opposite their respective names.

IN WITNESS WHEREOF I have hereunto set my hand as Secretary of said Tungsten Products Company this 16th day of August, 1919, and affixed hereto the corporate seal of said corporation.

[Corporate Seal] R. NENZEL,  
Secretary of Tungsten Products Company, a  
Nevada Corporation. [1105]



**Exhibit No. 4.**

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company, passed and adopted at Special Meeting of Stockholders held on August 23d, 1919.)

WHEREAS, the President and Secretary of this Company did, on the 16th day of August, 1919, execute on behalf of this corporation, a certain contract and agreement made between this Company and Tungsten Products Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California on the other part, which contract provided for the sale of this Company's property to said W. J. Loring, jointly with the property of the Tungsten Products Company, for a consideration of \$333,333.33 be, and the same is hereby ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders duly adopted.

FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby

adopted as the act of the stockholders of this Company. [1106]

Resolution of Stockholders of Nevada Humboldt  
Tungsten Mines Company Continued.

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Tungsten Products Company to purchase the real and personal property of this corporation and the real and personal property of said Tungsten Products Company for the sum of \$333,333.33, and

WHEREAS, the Board of Directors of this Company, have, by Resolution, recommended that this Company, accept the said offer and sell to W. J. Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Tungsten Products Company, which is a subsidiary corporation to this Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interest of this Company, and its creditors, to accept the offer of said Loring, and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already, in writing, ratified and ap-

proved the said contract and the proposed sale of this Company's property, and

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the Company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one.

[1107]

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring, good and sufficient Deeds and Bills of Sale to all of the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation. [1108]

(Resolution of Stockholders of Nevada Humboldt Tungsten Mines Company—Continued)

RESOLVED, that the action of L. A. Friedman, as Trustee for the stockholders of this corporation in voting 94,680 shares of the capital stock of the Tungsten Products Company in favor of the sale of the property of said Tungsten Products Com-

pany to W. J. Loring at a meeting of the stockholders of said Tungsten Products Company, held August 16th, 1919, be, and the same is hereby ratified, approved and confirmed and,

FURTHER RESOLVED, that the stockholders of this corporation do hereby adopt the said act of said L. A. Friedman, Trustee, as their own act and deed. [1109]

EXHIBIT "4" (CONTINUED).

(Resolution of Stockholders of Tungsten Products Company, passed and adopted at Special Meeting held on the 16th day of August, 1919.)

WHEREAS, the President and Secretary of this Company did on the 16th day of August, 1919, execute on behalf of this corporation a certain contract and agreement made between this Company and Nevada Humboldt Tungsten Mines Company, on the one part, and W. J. Loring of the City and County of San Francisco, State of California, on the other part, which contract provided for the sale of this company's property to said W. J. Loring, jointly with the property of the Nevada Humboldt Tungsten Mines Company, for a consideration of \$333,333.33 be, and the same is hereby ratified, confirmed and approved, and the acts of said officers are hereby adopted as the acts of this corporation as fully to all intents and purposes as if the said officers had been previously authorized to enter into and execute said contract and agreement on behalf of this Company by a Resolution of its stockholders adopted.



FURTHER RESOLVED, that the action of the Board of Directors of this corporation authorizing and directing the said officers to execute said contract on behalf of this corporation be, and the same is hereby ratified and approved and the act of said Board of Directors in this behalf is hereby adopted as the act of the stockholders of this Company. [1110]

(Resolution of Stockholders of Tungsten Products Company—Continued)

WHEREAS, W. J. Loring has made an offer to this Company, jointly with the Nevada Humboldt Tungsten Mines Company to purchase the real and personal property of this corporation and the real and personal property of said Nevada Humboldt Tungsten Mines Company for the sum of \$333,333.33 and,

WHEREAS, the Board of Directors of this Company have, by Resolution, recommended that this Company accept the said offer and sell to W. J. Loring the real and personal property of this Company upon the terms stated in the contract here exhibited and fully set forth in the Minutes of the special meeting of the Board of Directors of this Company, held on the 16th day of August, 1919, and

WHEREAS, this Company and said Nevada Humboldt Tungsten Mines Company, has become heavily indebted to various creditors and have not sufficient funds to meet the demands of said creditors, and it appears to us to be for the best interests of this Company, and its creditors, to accept the

offer of said Loring and to sell said property to him, and

WHEREAS, it appears upon inspection of the sale contract executed by officers of this Company and said W. J. Loring that more than ninety per cent of the outstanding capital stock of this corporation has already in writing ratified and approved the said contract and the proposed sale of this Company's property, and,

WHEREAS, we, the stockholders, deem that the offer of \$333,333.33 made for the property, in view of the indebtedness of the company and threatened law suits and other matters which tend to harass the Company and make a sale of its property at a higher figure impossible, is a reasonable one. [1111]

RESOLVED, that the President and Secretary of this Company be, and they are hereby directed, authorized and empowered to make, execute and deliver to said W. J. Loring good and sufficient deeds and Bills of Sale to all the properties of this Company described in said contract and any and all other rights, assignments and conveyances which may be necessary to properly convey the property of this corporation described in said contract to said Loring, under the terms of and as provided in said contract.

FURTHER RESOLVED, that the Board of Directors of this corporation be, and they are hereby ordered and directed to cause the said contract with said W. J. Loring to be fully carried out and performed on the part of this corporation. [1112]

**Exhibit No. 5.**

**MORTGAGE TO SECURE PURCHASE PRICE.**

THIS INDENTURE, made and entered into the 23d day of August, in the year of our Lord One Thousand Nine Hundred and Nineteen, by and between W. J. Loring, of the City and County of San Francisco, State of California, the party of the first part, and Nevada Tungsten Mines Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, and Tungsten Products Company, a corporation organized and existing under and by virtue of the laws of the state of Nevada, the parties of the second part,

**WITNESSETH:**

WHEREAS, the party of the first part has this day bought from the parties of the second part, and the parties of the second part have this day sold to the party of the first part, and to his heirs and assigns forever, all of the property hereinafter described, together with other property, for the sum of Three Hundred and Thirty-three Thousand Three Hundred and 33/100 Dollars (\$333,333.33), in lawful money of the United States, which said sum of money said party of the first part has obligated himself to pay to the parties of the second part in accordance with the provisions of that certain contract in writing, dated the 16th day of August, 1919, between the parties of the second part herein as parties of the first part therein, and the party of the first part herein as party of the second part therein, in in-

stallments, at the times, and in the manner, and in accordance with the provisions of said contract in writing of August 16th, 1919.

NOW, THEREFORE, in consideration of the premises, and in consideration of the sum of One Dollar in hand paid to the party of the first part herein by the parties of the second part herein, the receipt whereof by the party of the [1113] first part therein from the parties of the second part herein is hereby acknowledged, and for other good and valuable considerations him hereunto moving, the party of the first part herein does by these presents grant, bargain, sell and convey unto the parties of the second part herein, and to their successors and assigns forever, all those certain pieces or parcels of land situated in the County of Pershing, formerly the County of Humboldt, of Nevada, more particularly described as follows:

The Gross Mine No. 2, Gross Mine No. 3, White Rock Mine, and Sky High, lode mining claims, situated about seven miles northwest of Mill City station, on the Southern Pacific Railroad, copies of the location notices of which were duly recorded in the office of the County Recorder of said Humboldt County, in Book "S" of Notices, at page 502, reference to which said records for purposes of greater certainty of description is hereby expressly made, being the same property described in that certain Deed thereof to Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, dated February 17, 1917, and recorded in Book 53



of Deeds, page 146, records of the County Recorder of said Humboldt County, State of Nevada;

Together with all the dips, spurs and angles, leads, lodes, metals, ores, gold, silver and tungsten bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had and enjoyed;

Also, that certain lot, piece or parcel of land situated in the County of Pershing, (formerly the County of Humboldt) State of Nevada, and described as follows, to wit:

Beginning at the East quarter corner of Section Twenty Seven (27) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence South, along the East line of said Section, to the Southwest corner thereof; thence West, along the South line of said Section, to the South quarter corner thereof; thence northwesterly, in a straight line, to the place of beginning, containing eighty (80) acres, according to the United States Public Surveys, together with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, Being the same ground deeded to the Nevada Humboldt Tungsten Mines Company, a Nevada Corporation, in that certain deed, dated April 25, 1918, recorded in Book 53, page 76, of Deeds, records of the office of the County Recorder of said County of Humboldt, State of Nevada;

Also that certain piece or parcel of land lying, situate and being in the county of Pershing (for-

merly County of Humboldt), State of Nevada, more particularly described as follows:

Beginning at the Southwest corner of Section Twenty-seven (27), Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; thence North one Hundred feet; thence east five hundred (500) feet; thence south six hundred (600) feet; thence west six hundred (600) feet; thence north five (500) hundred feet; thence east [1114] one hundred (100) feet, to the place of beginning, being the same property described in that certain Deed thereof to Tungsten Products Company, a Nevada corporation, described in Book 1 of Deeds, page 18, official records in the office of the County Recorder of Pershing County, State of Nevada, to which said record reference is hereby expressly made; together with the mill, plant, improvements, tenements, and hereditaments thereon, and all the rights, privileges, easements and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed;

Also, that certain easement for the flow of tailings from the mill, or any other plant or structure, on, or that may be constructed on, said last above described tract flowing on or over the northeast quarter of Section Thirty-five (35) Township Thirty-four (34) North, Range Thirty-four (34) East, Mt. Diablo Base and Meridian; together with all the rights, privileges and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed. Being the same easement described in that certain Deed thereof

recorded in Book 1 of Deeds, page 20, official records in the office of the County Recorder of the County of Pershing, State of Nevada, to which said record reference is hereby expressly made;

Together with all the mills, buildings, improvements and equipment erected upon or in any of the land hereinbefore described; and including all property thereon or therein which constitutes real property under the provisions of the laws of the State of Nevada in such case made and provided.

This conveyance is intended as a mortgage, to secure the payment of Three Hundred Thirty-three Thousand, Three Hundred and Thirty-three and  $33/100$  (\$333,333.33) Dollars, in lawful money of the United States, as the purchase price of said and other property, upon the following installments and at the following times, to wit:

\$50,000 thereof on or before the 1st day of  
September, 1919.

\$50,000 thereof on or before the 1st day of  
October, 1919.

\$50,000 thereof on or before the 15th day of No-  
vember, 1919.

\$50,000 thereof on or before the 28th day of  
December, 1919.

\$33,333.33 thereof on or before the 4th day of  
February, 1920.

\$25,000.00 thereof on or before the 4th day  
of May, 1920.

\$25,000.00 thereof on or before the 4th day  
of August, 1920.

\$25,000.00 thereof on or before the 4th day of November, 1920, and

\$25,000.00 thereof on or before the 4th day of February, 1921.

All of said payments of installments of said purchase price to be made in cash, or by certified check, or by Cashier's check, or bank telegraph transfer, to the credit of the parties of the first part, at the First National Bank of Lovelock, Nevada, by payment thereof to its Cashier, J. T. Goodin, who is trustee for certain creditors of said parties of the second part herein, who shall, first, pay off the loan of \$10,000 procured by him to pay off labor claims, and shall thereafter pay out said installments so received to the respective creditors [1115] represented by him in accordance with his trust, but the payment thereof by said party of the first part herein to said Cashier and Trustee, or to his successors as such, shall be a complete performance by said party of the first part herein of the payment of each installment so paid, and said party of the first part herein shall not be obligated to ascertain whether said payments of said Cashier or Trustee have been properly distributed; according to the conditions of that certain written contract dated the 16th day of August, 1919, above mentioned, and these presents shall be void, if such payments be made according to the tenor and effect thereof.

It is hereby understood and agreed, that the party of the first part shall, while this mortgage continues in force and effect and until the debt secured



thereby shall be discharged, cause to be performed upon each of the unpatented mining claims in the property above described, the annual assessment work necessary to protect the same under the provisions of the Statutes of the United States and of the State of Nevada in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that the party of the first part herein shall have the right to conduct and operate said property, during the existence of this mortgage and until the debt secured thereby shall have been extinguished, to extract, ship, reduce and sell ore and concentrates therefrom, and shall apply the net proceeds of any concentrates derived from said operations, by him first to the payment of the debt of the parties of the second part herein as set forth in said written contract of August 16, 1919, obtaining credit therefor upon the installment of the purchase price in the manner therein set forth, and thereafter shall have the right to apply such net proceeds upon said installment of the purchase price as will then remain, and shall have the right of necessary repair, renewal and replacement of machinery, tools and equipment while so doing with machinery, tools and equipment of equal [1116] make and value, but all work and operations conducted by him upon or in said property or any part thereof shall be performed and done in a good and miner-like manner; and neither said parties of the second part, nor said property, nor any of them, shall be liable for the cost or expense of

operating or conducting mining, milling, or reduction works on or in said property, or for labor employed thereon or therein or material furnished thereon or therein, at the instance or request of said party of the first part herein or of his heirs, administrators, or assigns, but said party of the first part herein, his heirs, administrators and assigns shall be responsible for such costs and expenses;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein will cause to be recorded in the proper recording office and posted in the proper places upon said property and notices requested by the parties of the second part herein, that may be necessary to protect said property from liens under the provisions of the Statute in such case made and provided;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein will pay or cause to be paid, all taxes that may be levied upon said property by national, state, county or district authority, during the continuance of this mortgage, and until the debt secured thereby shall have been extinguished;

IT IS FURTHER UNDERSTOOD AND AGREED, that said party of the first part herein shall cause the buildings upon said property to be insured against fire in reputable fire insurance companies authorized and doing business under the provisions of the laws of the United States and of the State of Nevada, and having the right to

operate in said State of Nevada, in a sum of not less than \$82,950.00, and shall apportion said amount of insurance upon said property, as follows: mill buildings, not less than \$35,000; mill machinery, not less than \$40,000; superintendent's residence, [1117] not less than \$1,000; boarding-house and fittings, not less than \$800; twelve cottages now upon said property, not less than \$1,800; compressor's building, not less than \$400; compressor machinery, not less than \$1,500; gallows-frame on S. P. ground, not less than \$300; hoist-building at S. P. shaft, not less than \$100; hoist engine at S. P. Shaft, not less than \$500; gallows-frame, Carlson, not less than \$500; blacksmith's shop, not less than \$300; office and warehouse not less than \$750.

It is understood and agreed, that, in case said party of the first part herein should fail or neglect to pay any of said taxes when due, or fail or neglect to cause to be performed any of said annual assessment work required by the provisions of the Statutes of the United States or the State of Nevada, when necessary, the parties of the second part herein, or either of them, shall have the right, at their option, to pay said taxes, or fire insurance premiums upon the above insurance, or to cause said assessment work to be performed and to advance the money necessary therefor, and these presents shall constitute a security to them for the repayment of any such advances, as well as for the payments of the installments of the purchase price of said property hereinbefore set forth.

IT IS UNDERSTOOD AND AGREED, that if any installment of the purchase price hereinbefore set forth shall not be punctually paid when the same shall become due and payable, and for five days thereafter, as in said written contract of August 16th, 1919, and in this mortgage mentioned, then and in such case the whole of the balance of said purchase price then remaining unpaid shall be taken to be wholly due and payable, at the option of said parties of the second part herein, or of either of them, and proceedings may forthwith be had by said parties of the second part, their successors and assigns, for the recovery of the same, either by suit on said contract of August 16th, 1919, or on this mortgage, anything in said contract or in this [1118] indenture contained to the contrary thereof notwithstanding. And in any suit or other proceedings that may be had for the recovery of said balance of said purchase price, on either said contract or this mortgage, it shall and may be lawful for said parties of the second part herein, their successors or assigns, to include in the judgment that may be recovered, such reasonable counsel fees and charges of attorneys and counsel employed in such foreclosure suit as shall be fixed by the Court having jurisdiction of such foreclosure suit, as well as all payments that the parties of the second part herein, or either of them, or their successors or assigns, may make for their security, or for the security of either of them, on account of taxes or moneys expended for the payment of fire insur-



ance premiums, or for annual assessment work upon said premises, as hereinbefore mentioned.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal, the day and year herein first above written.

W. J. LORING.

Duly acknowledged before Booth B. Goodman,  
Notary Public, Aug. 23, 1919. [1119]

**Exhibit No. 6.**

In the United States District Court, in and for the  
District of Nevada.

AT LAW.

DAVID TAYLOR,

Plaintiff,

vs.

C. W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON, and LENA J.  
FRIEDMAN,

Defendants.

**BILL OF COMPLAINT.**

Comes now the plaintiff in the above-entitled action and complains of the defendants, and for cause of action alleges:

**I.**

That plaintiff is a citizen and resident of the

State of Colorado and of the City and County of Denver in said state.

## II.

That the defendants, and each of them, are citizens and residents of the State of Nevada and of Lovelock, Pershing County in said state.

## III.

That this is a controversy between citizens and residents of different states, and the amount in controversy, herein, exclusive of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars.

## IV.

That on or about the 16th day of January, 1919, the defendants executed, made and entered into a contract with the plaintiff for the sale of all of their respective interests in the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, said interests of the respective parties being represented by certain shares of stock in said companies; said Nevada Humboldt Tungsten [1120] Mines Company being then and there the owner of certain mines and mining claims and mining rights in certain real estate, all situated near Mill City in what is now the County of Pershing in the State of Nevada; that the Tungsten Products Company was a subsidiary of said Nevada Humboldt Tungsten Mines Company and owned and operated a mill for the treatment and concentration of certain scheelite ores produced by the Nevada Humboldt Tungsten Mines Company at its property afore-

said, and that the Mill City Development Company was a corporation owning certain real estate, also a pipe-line and water rights, and about fifty (50%) per cent of the capital stock of said corporation being then and there owned by the Nevada Humboldt Tungsten Mines Company or the Tungsten Products Company hereinbefore mentioned. That a copy of said contract for the sale of said respective interests of the defendants is attached to this Complaint, made a part hereof and marked Exhibit "A."

V.

That sometime immediately preceding the making and execution of the contract of January 16th, Exhibit "A," there had been brought to the attention of the plaintiff a report of one Howland Bancroft, a mining engineer of and concerning the mines, mining property and mining rights of the Nevada Humboldt Tungsten Mines Company, which said report showed the amount of development which then existed upon said mining property, and showed that about nine thousand (9,000) tons of scheelite ore of an average of 1.75% tungstic acid had been developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company; that at all of the times mentioned in this Complaint the defendants, Murrish, Nenzel and Poole were directors of the Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, and the defendant Poole had general charge of all mining and milling operations of [1121] said

Nevada Humboldt Tungsten Mines Company and its subsidiary, the Tungsten Products Company; that the facts and truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company and of the development work which had been performed and the new development work in process on and within said mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company, and the amount of ore developed, placed in sight, blocked out and ready for mining in said mining property of the Nevada Humboldt Tungsten Mines Company were at all times mentioned in this Complaint peculiarly within the knowledge and information of the defendants, and particularly of the defendants, Poole, Nenzel, Murrish and Friedman. That in or about the month of March, 1919, plaintiff informed the defendants that he would not exercise his option to purchase said interests of the defendants in said corporations under said contract of January 16th; that thereupon the defendants, Poole, Murrish, Nenzel and Friedman, acting for themselves and for the other defendants, falsely and fraudulently, by means of letters and telegrams, informed the plaintiff that further and new development work had been carried on within the mines, mining claims and mining rights, and property of the Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and ready for mining large quantities of scheelite ore of commercial value and capable of being concentrated, and the concentrates so returned being of



great value; that thereupon, and on or about the 2d day of April, 1919, the defendants Poole, Murrish and Nenzel came to Denver, Colorado, for the purpose of inducing the plaintiff to take a new contract for the disposition of their respective interests, or a part thereof, and the plaintiff, relying upon said representations of the defendants Poole, Murrish, and Nenzel, who then and there represented themselves, and were acting, as the representatives, agents and attorneys in fact for the other defendants, [1122] entered into a contract whereby plaintiff undertook to raise sufficient money to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, for which said service the plaintiff was to receive sixty-two (62%) per cent of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, sixty-two per cent (62%) of the issued capital stock of the Tungsten Products Company and sixty-two (62%) per cent of one-half of the issued capital stock of the Mill City Development Company, a full, true and correct copy of said contract being attached to this complaint, made a part hereof, and marked Exhibit "B,"—said contract was executed at Denver, Colorado; that the defendants Poole, Murrish and Nenzel, acting for themselves and as the agents of and for the other defendants, for the purpose of inducing the plaintiff to enter in and upon said supplemental contract, Exhibit "B," of date of April 2, 1919, then and there falsely and fraudu-

lently, and with intent to deceive the plaintiff, represented to plaintiff that when the contract of January 16, 1919, was entered into, Exhibit "A," there was blocked out, developed and in sight in said mine about nine thousand (9000) tons of scheelite ore carrying 1.75% tungstic acid; and that since said date great and additional ore bodies of equal grade had been developed; that a large amount of new development work had been done and performed upon said mines and that there was then on said 2d day of April, blocked out, in sight and ready for mining and reduction into concentrates over sixty thousand (60,000) tons of scheelite ore which would carry from 1.50% tungstic acid or 1.75% tungstic acid; that each and all of said representations were false and untrue and were known by the defendants at the time they were made to be false and untrue, and were made for the purpose of deceiving the plaintiff and for the purpose of causing him [1123] to undertake and carry out the provisions of said supplemental contract of April 2, Exhibit "B," attached hereto; that in truth and in fact at said time there was opened up and developed and in sight in said mine not to exceed nineteen thousand (19,000) tons *to* scheelite ore of an average value not to exceed 1.75% tungstic acid.

## VI.

That plaintiff, relying upon and believing said false and fraudulent representations of the defendants, so made on or about the 2d day of April, 1919, immediately gave practically his sole time and at-

tention to the carrying out of the terms of said contract by which he was to raise for the benefit of the corporations, Nevada Humboldt Tungsten Mines Company, Tungsten Products Company and Mill City Development Company, sufficient moneys for the payment of their debts and outstanding obligations, and in so doing and in his endeavor to carry out said provisions of said contract, and for the purpose of consummating the same, laid out and expended for traveling expenses of plaintiff to Lovelock, Nevada, San Francisco, California, New York City, and to various other places, for assaying, maps, surveys, expert services for mining examinations and reports, legal fees for the examination of titles and of the organization of the corporations, telegrams and telephones the sum of Eight Thousand eight hundred twenty and 21/100 (\$8,820.21) Dollars.

## VII.

That plaintiff also gave his time and efforts to said enterprise and the consummation of said contract during all of the time from April 2 to on or about June 1, 1919; that, as a result of the expenditures, time and efforts of the plaintiff, plaintiff succeeded and had pledged by himself and others associated with him an amount sufficient to meet [1124] any obligations of his under the terms of said contract, and sufficient to entitle him to receive sixty-two (62%) per cent of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two (62%) per cent of the stock of the Tungsten Products Company, and sixty-two (62%) per cent

of one-half of the Mill City Development Company under the terms of said contract of April 2, 1919, Exhibit "B."

### VIII.

That on or about the first of June, 1919, plaintiff discovered the falsity of the representations of the defendants, and thereupon his associates, who had agreed to furnish a large portion of the money necessary for the completion of the obligations of plaintiff under said contract, withdrew from said undertaking and refused to go into the same or to advance any money whatsoever for it.

### IX.

That had the representations of defendants, as to the amount and quality of ore opened up, developed and in sight in said mine, been true, said ores would have had a net value, over and above all expenses of cost of mining, transportation and sale of Three Hundred Twenty Thousand (\$320,000) Dollars; that the debts and obligations of said corporations were then, and are now, of about one hundred fifty thousand (\$150,000) Dollars; that the net value of said mines and of the stock of said companies, after the payment of all debts, had the representations of defendants been true, would have been about One Hundred Seventy Thousand (\$170,000) Dollars; that in truth and fact said corporations, and each of them, are now insolvent; that the total value of their assets, including all ore developed, in sight and available, did not then, or now, exceed the sum of *One Hundred Twenty* (\$120,000) Dollars; that the ore in sight in said mine [1125] was not



then, to wit on the 2d day of April, or now, of any other, further or greater value than Seventy Thousand (\$70,000) Dollars; that the value of the stock which plaintiff would have received under the terms of said contract, and to which he was entitled, had the representations of defendants been true, would have been One Hundred Five Thousand Four Hundred (\$105,400) Dollars.

X.

That by reason of the false and fraudulent representations aforesaid plaintiff has been damaged in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$111,579.44) Dollars.

WHEREFORE, Plaintiff prays judgment against the defendants, and each of them in the sum of One Hundred Fourteen Thousand Five Hundred Seventy-nine and 44/100 (\$114,579.44) Dollars.

NORCROSS, THATCHER & WOODBURN,  
Attorneys for Plaintiff. [1126]

EXHIBIT "A."

THIS AGREEMENT made between David Taylor, of Denver, Colorado, party of the first part, and L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, all residents of Lovelock, Nevada, being the holders of ninety-nine (99%) per cent of the capital stock of the Nevada Humboldt Tungsten

Mines Company and the Tungsten Products Company, and L. A. Friedman, as trustee, parties of the second part;

WITNESSETH:

THAT, WHEREAS, said L. A. Friedman, C. W. Poole, R. Nenzel, C. H. Jones, H. J. Murrish, G. K. Hinch, John G. Huntington, J. T. Goodin, V. A. Twigg, and Lena J. Friedman, are the owners and holders of stock in each of the above companies, the number of shares of stock in each company being set opposite their respective signatures hereto, and

WHEREAS, L. A. Friedman is Trustee for all other of said second parties hereto, of all of their interest in the Mill City Development Company, which said corporation is in the process of organization, and which said corporation has not as yet issued its stock, and

WHEREAS said second parties desire to sell all of their interest in the said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company and said Mill City Development Company, all of which corporations are corporations organized and existing under the laws of the State of Nevada, and

WHEREAS said first party is desirous of securing an option to purchase the entire interest of all of said second parties in all of said corporations, and

WHEREAS said first party has this day entered into a contract with the Nevada Humboldt Tungsten Mines Company and [1127] said Tungsten

Products Company to advance said corporations the sum of One Hundred Thousand Dollars (\$100,000.00) to enable said corporations to continue their business and operations and to discharge a portion of their indebtedness.

1. NOW, THEREFORE, in consideration of the premises and in consideration of the said first party hereby entering into said agreement to advance said One Hundred Thousand Dollars (\$100,000.00) to said corporations, said second parties hereby grant and give to said first party an option to purchase all of the stock held by said second parties in the Nevada Humboldt Tungsten Mines Company and in the Tungsten Products Company, and all of the interests of said second parties in the Mill City Development Company at the price and in the manner hereinafter specified. This option shall be good up to and including the sixteenth (16th) day of July, 1919.

2. The price to be paid for all of said stock in all of said corporations owned by all of said second parties shall be fifty cents (50¢) per share for each share of stock held by said second parties in the Nevada Humboldt Tungsten Mines Company, and said second parties shall transfer, assign and set over unto said first party without further charge or cost to said first party, all of the stock owned by said second parties in the Tungsten Products Company and the Mill City Development Company which they now own or shall be entitled to upon the complete organization of the Mill City

Development Company; total purchase price shall be \$498,400.00.

3. Said second parties will during the life of this option pay all of the debts and obligations of all of the said corporations; and agree that said corporations will maintain their plants and equipment in their present condition of [1128] efficiency, and will continue the present development work as it has heretofore been conducted. Said second parties will also complete the organization of the Mill City Development Company and discharge all of their obligations to said Mill City Development Company.

4. It is further understood and agreed that no dividends of any kind, nature or description shall be paid by said corporations during the life of this option, and that none of the assets of said corporations shall be disposed of other than scheelite concentrates provided that replacements of equipment shall be permitted.

5. It is further understood and agreed that no increase of salaries or bonuses shall be made, given, or paid to any officers or directors or stockholders of said corporations during the life of this option.

6. It is further understood and agreed that in case said option is exercised and said debts and obligations of said corporations are not paid at the time of the exercise of said option, the said first party shall deduct a sufficient amount from the purchase price to pay all outstanding debts and obligations and engagements of said corporations.



7. It is understood and agreed that the purchase price for said stock shall be paid as follows: \$100,000.00 at the time said option is exercised. \$25,000.00 on the first of each and every month thereafter until the total purchase price has been paid.

8. Said option shall be exercised by giving notice in writing to the Wells Fargo Nevada National Bank of San Francisco, and by mailing a written notice of such exercise of said option addressed to each of said parties, addressed to Lovelock, Nevada. Payments shall be made through the Wells Fargo Nevada National Bank of San Francisco, California. [1129]

9. Said second parties agree to deposit all of the stock of the Tungsten Products Company owned by said second parties, and Two Hundred Eighty-five Thousand (285,000) shares of stock in the Nevada Humboldt Tungsten Mines Company within Ten (10) days from the execution of this option in the Wells Fargo Nevada National Bank of San Francisco. It is understood and agreed that the remaining shares of stock in said Nevada Humboldt Tungsten Mines Company, upon which option is hereby given, owned severally by said second parties are now up as collateral for certain loans to said individuals, and as to such stock, it is hereby agreed that within ten (10) days from the execution of this agreement, each and every of the parties signatory hereto, who has such stock now up as collateral shall notify by letter the bank, person or company holding said stock

as security of the giving of an option on said stock and shall further instruct said bank, firm or company in the event that the amount secured by such stock is not paid on or before July 15, 1919, to send the evidence of such debt together with the stock to the Wells Fargo National Bank for collection, with instructions to said bank, upon the payment of the obligation to place the stock, security therefor, with the escrow herein mentioned, and forthwith mail to the first party a true and correct copy of said letter.

10. That said second parties agree to discharge said loans prior to the exercise of said option. In case said second parties do not discharge said loans, said second parties agree that the Wells Fargo Nevada National Bank shall from the proceeds of the first One Hundred Thousand Dollars (\$100,000.00) deposited, pay such indebtedness to said parties and hold the same until the full purchase price has been paid. Upon the payment of the full purchase price of said stock all of said stock shall be delivered to said first party. [1130]

11. Said second parties further agree to deposit in escrow with said Wells Fargo Nevada National Bank resignations of all of their directors and to deliver one resignation to said first party for every One Hundred Thousand Dollars (\$100,000.00) as paid. Said second parties further agree that they will cause to be immediately elected to said Board of Directors of said corporation in place of the director resigning, the nominee of said first party. Upon the exercise of this option and

the payment of said One Hundred Thousand Dollars (\$100,000.00), the management of said corporations shall be turned over to said first party, and the said second parties will cause the Board of Directors of said corporations to name as general manager of Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company, the nominee of said first party, which general manager shall have full power and authority to remove any and all superintendents, foremen, agents, servants and employees of said corporations, and to employ any and all necessary superintendents, foremen, agents, servants and employees as may be necessary to operate said properties.

12. In the event said first party shall delay for a period of five (5) days to make any of the loans to said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company called for in said loan agreement, the said second parties in their discretion may terminate this option by giving immediate notice thereof in writing to said first party.

13. Second parties agree that said One Hundred Thousand Dollars (\$100,000.00) loaned said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company shall be used solely to pay operating expenses, to purchase of reasonable supplies and reasonable equipment, and to discharge the indebtedness of said corporations. [1131]

14. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 16th day of January, 1919.

(Signed) DAVID TAYLOR,

First Party.

L. A. FRIEDMAN, .....10,640 shares.

R. NENZEL, .....102,000 shares.

C. W. POOLE, .....119,160 shares.

H. J. MURRISH, .....101,000 shares

(C. H. JONES, .....100,000 shares.

(G. K. HINCH, ..... 10,000 shares.

(JOHN G. HUNTINGTON, .50,000 shares.

(J. T. GOODIN ..... 5,000 shares.

(V. A. TWIGG, ..... 3,000 shares.

Signed by R. NENZEL,

Attorney in Fact.

LENA J. FRIEDMAN, ..400,000 shares.

Second Parties,

L. A. FRIEDMAN,

Trustee. [1132]

### EXHIBIT "B."

THIS AGREEMENT this day entered into between David Taylor, of Denver, Colorado, first party, and L. A. Friedman, Lena J. Friedman, C. W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and H. J. Murrish, second party,



WITNESSETH:

WHEREAS the parties hereto, on or about January 16, 1919, entered into an agreement in respect to the purchase and sale of certain stock of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, reference to which contract is hereby made and which said contract is made a part hereof, and

WHEREAS the Nevada Humboldt Tungsten Mines Company on the same date, entered into an agreement with the said David Taylor for the advance of certain moneys on scheelite concentrates, as more particularly appears in said agreement to which reference is hereby made, and

WHEREAS this agreement is supplemented to both of said agreements and all of said agreements are now to be read together and considered as one in so far as applicable, due reference being had to the changes herein made, and

WHEREAS, owing to the demoralization of the tungsten market it seems impossible for the said David Taylor to market scheelite concentrates or to interest parties in the purchase of tungsten properties, and for that reason it is deemed probable that said Taylor will not be able to exercise his option contained in the above-mentioned agreement, and

WHEREAS, by reason of the facts herein named it may [1133] become impossible for the Nevada Humboldt Tungsten Mines Company and the other companies above referred to to secure sufficient

funds for the liquidation of their indebtedness, and

WHEREAS it is the purpose of this agreement to so modify the said option as to enable the said Nevada Humboldt Tungsten Mines Company and its allied companies to pay its debts, continue its operation and secure itself from the jeopardy of possible loss through suits by its creditors,

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) each to the other in hand paid, it is mutually understood, covenanted and agreed as follows, to wit:

1. The first party undertakes to secure by borrowing for the Nevada Humboldt Tungsten Mines Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of Two Hundred and Twenty Thousand (\$220,000.00) Dollars, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing such sums of money, 62% of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62% of the issued capital stock of the Tungsten Products Company, 62% of one-half of the issued capital

stock of the [1134] Mill City Development Company; that a deposit of the amount necessary to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided.

**IT IS MUTUALLY UNDERSTOOD AND AGREED:**

A. That the said sum raised by the first party herein is a loan to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not a payment for stock; and that same is to be evidenced by the issuance of redeemable preferred stock with a maximum of 7% cumulative interest, provided that said stock shall not be sold for less than 95% of par net to the Company.

B. That the second parties hereto will cause a new company to be organized to which the assets of the companies herein described shall be conveyed; or shall amend the present articles of the Nevada Humboldt Tungsten Mines Company and its allied companies hereinbefore mentioned, in order to effectuate this agreement as shall be required by the first party.

C. It is agreed that in such incorporation, or in the amendment above provided, due and proper provision shall be made (1) that 80% of the Board of Directors must approve the sale of any of the property of the Company or the purchase of additional property; (2) that the cumulative voting

power of the common stock shall not be taken away; (3) that the net receipts from any relief received from the United States Government under the War-Minerals Relief Act of the corporations herein mentioned or any of them, shall inure to the benefit of such new corporation as may [1135] be formed; (4) that profits shall be distributed whenever same have accumulated to the amount of Fifty Thousand (\$50,000.00) Dollars or over, after the debts are paid, unless contrary provided by a vote of 80% of the Directors; (5) and further, that the preferred stock shall be redeemed out of the profits on June 30 or December 31, of every year, whenever the sum of Fifty Thousand (\$50,000.00) Dollars is accumulated, and before any dividends are paid on the common stock.

D. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that the performance of this agreement shall release the first party from any and all obligation to pay the purchase price of said stock mentioned in the option hereinbefore referred to.

E. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided in Paragraph 1 hereof.

Time is the essence of this agreement, and each and every clause hereof shall bind and benefit the



heirs and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this 2d day of April, 1919.

(Signed) DAVID TAYLOR,  
First Party. [1136]

C. W. POOLE,  
R. NENZEL,  
H. J. MURRISH,  
L. A. FRIEDMAN,  
LENA J. FRIEDMAN,  
C. H. JONES,  
G. K. HINCH,  
J. T. GOODIN,

By R. NENZEL,  
Attorney in Fact.

V. A. TWIGG,  
J. G. HUNTINGTON,  
Second Parties.

C. W. POOLE,  
Attorney in Fact. [1137]

United States of America,  
State of Nevada,  
County of Washoe,—ss.

David Taylor, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has heard read the foregoing complaint, and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on in-

formation and belief, and as to such matters he believes it to be true.

DAVID TAYLOR.

Subscribed and sworn to before me this 9th day of August, 1919.

[Seal]

OBELINE SOUCHEREAU,

Notary Public.

[Endorsed]: In Equity. B-7. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, et al., Defendants. Answer of Defendant, W. J. Loring. Filed September 7th, 1920. T. J. Edwards, Clerk. John F. Davis, and Charles S. Wheeler and Charles S. Wheeler, Jr., Attorneys at Law, 14 Montgomery Street, San Francisco, California. [1138]

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In the District Court of the United States, in and for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W.  
POOLE, R. NENZEL, H. J. MURRISH,

L. A. FRIEDMAN, C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A. TWIGG, J. C. HUNTINGTON and LENA J. FRIEDMAN, Individually,

Defendants.

**Opinion.**

HOYT, NORCROSS, THATCHER, WOODBURN & HENLEY, for Plaintiff.

COOKE, FRENCH & STODDARD, for Defendants, Nevada Humboldt Tungsten Mines Company, et al.

Mr. JOHN F. DAVIS, WHEELER & WHEELER, and Mr. BOOTH D. GOODMAN, for Defendant, W. J. Loring. [1139]

FARRINGTON, District Judge:

Throughout this decision the different corporations will be designated at Tungsten Company, Products Company and Development Company respectively.

January 16, 1919, plaintiff Taylor and the two defendants, Tungsten Company and Products Company, entered into a contract, a copy of which is attached to the complaint, in which Taylor agreed to advance \$100,000, and the two companies engaged to deliver to him at specified dates 170 tons of scheelite concentrates of certain guaranteed qualities. On the same day the defendants Friedman, Poole, Nenzel, Jones, Murrish, Hinch, Huntington, Goodin, Twigg and Lena Friedman, granted Taylor an option on all their interest in the three

corporations for a total purchase price of \$498,400, agreeing that all debts and obligations of the said companies should be satisfied out of the purchase money, and that the option should be good up to and including July 16, 1919. Later, and on the same day, January 16, 1919, Taylor, B. D. Thane and Howland Bancroft signed a writing, in which it was stated they mutually agreed that Taylor should use his best endeavors to carry out the terms of the option, make a sale of the property, and in the event of success, the profits should be divided, 60 per cent to Taylor, 20 per cent to Thane, and 20 per cent to Bancroft. Thane released all his claims to Taylor under this contract September 11, 1920. Bancroft's interest was understood to be in payment for his professional services. He retained it until March 29, 1920, and was otherwise compensated, because he "refused to testify as an expert for anybody as an interested party." (Transcript, p. 197.)

Beginning on the following day, January 17th, Bancroft made a ten-days' examination of the mine, and on February 15th reported as blocked out 8,111 tons of ore averaging 1.75 per cent WO<sub>3</sub>; and two thousand to three thousand tons unsampled. His conclusion was that "From many viewpoints the property is [1140] one of the most favorably situated tungsten mines in the United States. It is one of the few containing an ore-body which is commercial under pre-war market prices for this product and present high prices labor, supply and material conditions. At a market price



of \$6.25 per unit, treating 100 tons of ore per day with an 80% recovery, tungsten ore from this ore body will pay expenses if it runs 1% WO<sub>3</sub>. (As previously stated, the average tenor of the 8111 tons of indicator ore is 1.75% WO<sub>3</sub>. The average market price of tungsten trioxide for 10 years prior to the war was \$6.93 per unit)."

February 24th Taylor wrote there was no chance of interesting anybody in the purchase of the property at a half million dollar price, and suggested that the best thing to do all around was to close down the mine. After considerable correspondence relative to modifying the option, Poole, Nenzel, and Murrish, representing stockholders, proceeded to Denver, arriving Sunday, March 30th. April 2d a new agreement was executed, a copy of which is attached to the complaint, marked Exhibit "C." In this agreement Taylor undertook to secure by borrowing for said companies, on or before June 16, 1919, a sum sufficient to liquidate the indebtedness of the Tungsten Company, the Products Company, and the share of the indebtedness of the Development Company which the second parties owed. The indebtedness was estimated to be \$220,000. The parties of the second part covenanted and agreed to deliver to Taylor in full payment for his services 62 per cent of the issued capital stock of the Tungsten Company, 62 per cent of the issued capital stock of the Products Company, and 62 per cent of one-half of the issued capital stock of the Development Company, if on or before said date he secured a sum sufficient to

liquidate the indebtedness as provided. It was further [1141] agreed that a deposit of the amount necessary to liquidate the indebtedness in the Wells Fargo Nevada National Bank "should be sufficient evidence of the performance of the conditions herein, for the transfer and delivery of the stock as herein provided." It was also provided that the sum so raised should be a loan to the three companies, and not payment for stock, and should be evidenced by the issue of redeemable preferred stock, "with a maximum of 7 per cent cumulative interest." The stock was not to be sold for less than 95 per cent of par, net to the company. The second parties agreed to cause a new company to be organized to which the assets of the three corporations should be conveyed, or to amend the present articles of the three companies "in order to effectuate this agreement as shall be required by the first party." Certain provisions to be made in such incorporation or amendment were specified. It was also provided that the contract should expire June 16, 1919, and carry with it the option of January 16th, and that time should be of the essence of the agreement.

In May, Bancroft again examined the mines. On the 22d instant, while the examination was in progress, he received a letter dated May 20th, from Taylor, stating that his attorney Jackson was planning to leave New York May 23d for Lovelock.

"I do not," so the letter reads, "wish to go to this expense if your examination does not check up our idea that there is at least 40,000

tons of ore assured, with probabilities of a big additional tonnage, so that, if upon receipt of this letter you can give me any idea as to whether you think the tonnage is there or not, I wish you would wire me either 'advise postponing lawyer's trip,' or 'advise having lawyer leave at once.'—If it is in any way possible I want to get the deal closed before the first of June." (Exhibit "K.") [1142]

May 22d Bancroft wired Taylor:

"Your letter 20th just received. Required tonnage exposed on at least two sides. Can give no positive assurance regarding tungsten contents until receipt of assay returned. Believe property will hold up and my former favorable opinion remains unchanged." (Exhibit 1.)

On the next day, May 23d, Taylor wired the Tungsten Company at Lovelock:

"Bancroft's estimate satisfactory.— Have auditors wire us approximate indebtedness.— Our lawyer Jackson due Lovelock Wednesday night or San Francisco Thursday night. Would Murrish prefer have him stop Lovelock on way out, or meet him San Francisco." (Exhibit 23.)

The Tungsten Company replied, asking that Jackson stop at Lovelock, and stating the accounts payable were \$5,000 in excess of estimates; that overcharge on freight and adjustments would probably reduce that amount \$4,000, and that the ex-

cess could be satisfactorily explained. (Exhibit "S" and "T.")

May 26th Taylor wired Poole, who was then in Washington:

"Nenzel now reports indebtedness five thousand more than estimated. Believe your presence Nevada imperative if any deal to be closed." (Exhibit 2.)

And on the 28th he wrote Poole that the statement of indebtedness given him April 30th was not an estimate, but the exact statement of accounts on that date; that neither he nor Thane could go to their people and ask them to advance the additional \$5,000; that he could not himself take care of this additional loan, because he would have to dig to the bottom of his pockets to raise the necessary \$150,000 which would be available in cash June 2d, and suggested a method by which the stockholders of the mine could take care of this \$5,000 themselves. [1143] (Exhibit "E.") Thane expected to advance \$25,000 of the \$150,000, but on the 29th he wired Poole from New York to arrange with his associates for an extension of thirty days on this \$25,000. (Exhibit 25.)

On the 30th, while Taylor was en route from Denver to Lovelock, he wired Thane as follows:

"Bancroft original tonnage estimate all right but large part not commercial thus accounting for only 20,000 tons average recoverable tungsten 1.46 per cent tungstic acid showing sure profit of only hundred thousand dollars. Will endeavor extend present option six



months having friendly bankrupt proceedings and myself appointed receiver make Poole superintendent build assay office get assayer at mine and make agreement with court that we will exercise option whenever Bancroft will certify to 40,000 tons of 1.4 recoverable developed ore on at least two sides. Bancroft still believes general prospects for big cheap mine excellent. On this basis will you agree to take twenty-five thousand on same basis when requisite tonnage and grade developed? If you approve suggest wiring Poole urging him to favor this plan address Lovelock Saturday.” (Exhibit “L.”)

The telegram indicates Taylor contemplated a better bargain, not a relinquishment of any of his right to purchase the property.

During the first week in June, Taylor with his attorneys Jackson and Bayless, was in conference with the defendants Poole, Murrish, Nenzel and Jones, in San Francisco. Jackson testified that he and Taylor wanted to go to San Francisco, because they felt it would be possible, with the co-operation of creditors, to make a deal on substantially the lines of the April 2d contract, with advances pro-rated to the condition of the mine as disclosed by Bancroft; it seemed to them that San Francisco was a better place to negotiate.

Poole testified that Taylor told him not to tell his [1144] associates in the Tungsten Company that Bancroft's report was unfavorable.

“He said, ‘I want to go on down to San Francisco and arrange a new deal, and if they know that I am not going through with this deal they probably won’t go. I think I can deal with them better in San Francisco than I can here.’ He says, ‘You owe good money, don’t you’? I said ‘Yes; we owe money.’ ‘Well,’ he says, ‘I want to see Goodin, and have him come to San Francisco, and if these fellows get obstreperous he can put the screws to them.’ ” (Trans., p. 397.)

Loring testified that about June 25th, or some time after the middle of June, he had breakfast with Taylor at the Belmont Hotel in New York. During the conversation Taylor stated that the mine had not developed in accordance with his anticipations; that it “had developed 19,800 tons of ore, but by a stretch of imagination he could bring it up to 23,000 odd tons. I don’t remember the exact tonnage that he had set out to develop—a larger tonnage. ‘Well,’ I said, ‘then you don’t propose to go on with the deal’? He said ‘I do.’ He said, ‘I am going to take the mine away from the boys, or away from Friedman,’ or something to that effect, and looked me right in the eye when he said it.” (Trans., p. 543.)

Jackson testified that at the San Francisco conference he stated to Murrish and his associates that Taylor’s reason for entering into the contract of April 2d was Poole’s statement in Denver that the mine contained 60,000 tons of commercial ore, and it now developed that the representation was

a mistake, as Bancroft, who had just examined the mine, reported there were but 20,000 tons.

Taylor's proposal for a new agreement, embodied in a writing presented to the defendants at San Francisco (Exhibit [1145] 17), provided for the organization of a new corporation, to which should be conveyed the assets of the Tungsten Company, the Products Company, and one-half of the issued stock of the Development Company. The officers of the new company were to be Taylor president, Thane managing director, Poole mine superintendent, directors, Taylor, Brown, Friedman, Poole, and a representative of the creditors. Taylor on his part was to purchase \$85,000 of the company's bonds, paying 95 per cent of their face value, the bonds to draw 7 per cent interest, and to be a first lien on all the ore blocked out in the mine. The money derived from the bonds thus sold to Taylor was to be applied, \$10,000 for working capital, the remainder in payment of creditors' claims under \$500; and a dividend of about 45 cents on the dollar to other creditors. The creditors were to agree to defer enforcement of their claims until Taylor should have reduced the mortgaged ore to concentrates; the concentrates were to be sold by Taylor, and the proceeds applied, first, to the expenses, and second, to the redemption of the bonds. It was further provided that when an engineer selected by Taylor certified that 20,000 tons of additional ore were blocked out, Taylor was to purchase additional bonds at 95 per cent of the face value, bearing 7 per cent interest, secured and paid as

the first bonds, sufficient in amount to liquidate the debts, but no more than enough to net the company \$65,000 for that purpose. Sixty-two per cent of the stock in the new company was to be issued to Taylor for his services. Each and all of the creditors were to jointly and severally agree not to take or commence any proceedings against the new company which would in any manner embarrass Taylor in the collection of his advances. And finally, the agreement was not to become effective, unless creditors owning 95 per cent in amount of the scheduled claims in excess of \$500, became parties thereto. (Exhibit "A-1.")

This proposed agreement was rejected by the creditors as well as by the stockholders. [1146]

July 1st, defendant Loring sought an option on the property, which, as finally arranged, contemplated the payment by Loring of \$333,333.33 in nine payments, the first \$50,000 to be made September 1, 1919, the last, of \$25,000, February 4, 1921. Out of these payments the debts, then estimated to be \$200,000, were to be paid. August 10th Taylor wired Loring asking what interest the latter had bought in the Tungsten property, stating that the companies and the stockholders owed him considerable money, and that his attorneys considered he had a good case for compelling present stockholders to assign him control of the stock of both companies, or as an alternative, heavy damages. (Exhibit 28.) On the next day Loring replied that he held an option on the Nevada Humboldt interest. (Exhibit 29.) August 16th Taylor



commenced two actions in this court; the first against the Tungsten Company and the Products Company, number 2262, to recover the sum of \$9,-179.44, as the balance due on account for money loaned. This action was settled by the payment to Taylor of \$7,334.04, in December, 1919, and February, 1920. The evidence shows that Taylor's attorneys received the payments in the knowledge or belief, as was the fact, that this money came from payments made by Loring on the purchase price of defendants' properties. (Trans. p. 563.)

The second action, number 2263, was brought August 16, 1919, against Poole, Nenzel, Murrish, Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena Friedman, to recover the sum of \$114,579.44 damages. The complaint was sworn to by Taylor August 9, 1919, one day before he wired Loring asking what if any Nevada Humboldt interests the latter had bought. In it was set forth the same matters which are set forth in paragraphs 4, 5, 6 and 7 of the complaint in the present case, the substance of which is that the defendants last named had agreed to convey to him 62 per cent of the issued capital stock of the [1147] Tungsten Company, a similar portion of the stock of the Products Company, and 62 per cent of one-half of the issued capital stock of the Development Company, in consideration of his raising by borrowing for said companies sufficient money to pay their debts; that in order to induce him to enter into the contract of April 2, 1919, they had falsely and fraudulently represented to

him that there was in said mines on that date, blocked out and ready for mining, "over 60,000 tons of scheelite ore, which would carry from 1.50% of tungstic acid to 1.75% tungstic acid"; that plaintiff, believing and relying on such representations, entered into the contract, and incurred expenses in the sum of \$8,820.21; that he had given his sole time and attention to raising said moneys until about June 1st, when he learned that the representations were false, whereupon his associates, who had agreed to furnish a large portion of the money called for by the contract, declined to do so. He also alleged that if defendants' representations had been true, the ores would have had a net value of more than \$320,000, and the net value of the mines above the indebtedness of the companies, would have been \$170,000; that the corporations were then, and each of them was, wholly insolvent; that the total value of the assets did not exceed \$120,000; that the ore in sight April 2d was not of any greater value than \$70,000; that the fair value of plaintiff's 62 per cent of the stock, if the representations had been true, would have been \$105,400; and that by reason of such false representations he had been damaged in the sum of \$114,579.44.

On the same day that the action for damages was commenced, a written agreement was executed in which the Tungsten Company and the Products Company covenanted to sell their properties to Loring, and he agreed to pay a third of a million dollars therefor. (Exhibit "A-12.") This con-

tract was ratified [1148] and approved by the owners of more than 95 per cent of the issued capital stock of the Tungsten Company, and by the owners of all the issued capital stock of the Products Company.

At the meeting of the stockholders of the Tungsten Company, held August 23, 1919, Taylor's protest was received, read and filed. The only expressed grounds of his objection were that the meeting was called without authority of law; that the proposed action was beyond the authority of the directors or of the stockholders; that no proper, sufficient or adequate notice had been given of the meeting, and that in ratifying or confirming the action of the directors of said corporation in entering into any agreement of purchase and sale of all its property, they would be exercising powers not granted to the directors of the corporation, or to its stockholders.

September 26th, after Loring had made his first payment of \$50,000, Taylor served notice on the Tungsten Company and its board of directors, and also on Friedman and his associates, demanding that the stockholders meet immediately, and set aside the action whereby they had authorized contracts with and conveyances to Loring; that appropriate actions or suits be commenced to declare the conveyances null and void, because the stockholders' meeting of August 23d was held without proper notice, and because neither the corporation, its board of directors or its stockholders had au-

thority to execute conveyances disposing of all the corporate property.

October 16, 1919, Taylor brought a suit in this court against Loring and the Tungsten Company, asking that all conveyances, deeds, assignments and bills of sale executed by the company to Loring, the contract of August 16, 1919, between Loring and the Company, and the ratification of the same by the stockholders, be set aside. Prior to this suit, designated as B-1, Loring had paid in performance of his contract with the Tungsten Company and the Products Company the sum of \$100,000. [1149]

April 17, 1920, Taylor commenced the present suit. In his complaint he alleges that after he had notified Friedman and associates that he probably would not be able to exercise his option under the contract of January 16, 1919, the defendants Poole, Murrish, Nenzel and Friedman, (1) by means of telegrams and letters informed plaintiff that further and new development work in said mines had placed in sight large quantities of scheelite ore of commercial value; (2) that about April 2d, 1919, the defendants Poole, Murrish and Nenzel, at Denver, Colorado, represented to him that since the examination of the mining claims by Bancroft, additional ore bodies of equal grade and quality had been developed, and that there was then blocked out over 60,000 tons of scheelite ore, which would carry an average of 1.75 per cent tungstic acid; that each and all of said representations were false and untrue, and were known by the defendants to be un-



true, and were made for the purpose of deceiving plaintiff and causing him to undertake and carry out the terms of the contract of April 2d; that in reliance on said representations he entered into the contract, gave his time and efforts, and expended more than \$8,000 in carrying out his obligations thereunder, until about June 1st, when he discovered the representations were false; then his associates, who had agreed to furnish a large part of the money, refused to advance any more. In addition, plaintiff alleges full performance on his part; refusal of the defendants to organize a new company, or amend the articles of incorporation of the Tungsten Company, or deliver the 62 per cent of their stock; that the stock at and before the commencement of the suit had no market value; that there is no method of ascertaining the amount of damages plaintiff has or will suffer; that defendants had contracted to sell the property to Loring; that meetings of the stockholders to ratify and confirm the contract were without adequate notice; that plaintiff promptly demanded a rescission of the sale, but the officers, directors and stockholders refused to set aside the [1150] pretended conveyances to Loring or to commence any action; that Loring took said contracts and deeds with full notice of the plaintiff's rights, and was regularly informed thereof before he had in any wise performed any part of the contract; that another meeting of the stockholders of the Tungsten Company had been called for April 19, 1920, to further authorize and ratify the sale to Loring, and unless restrained by order

of this court, the 62 per cent of the capital stock, which is the rightful property of plaintiff, would be voted in favor of authorizing such sale, to the great and irreparable injury of plaintiff; that about June 1, 1919, plaintiff offered to perform each and every covenant on his part to be performed, provided defendants would allow him an abatement of certain terms therefor for and on account of said false and fraudulent representations; and that plaintiff has no plain, speedy and adequate remedy at law;

“Wherefore, plaintiff prays judgment and decree of this Honorable Court, decreeing that the defendants Poole, Nenzel, Murrish, L. A. Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman be compelled to specifically perform their said contracts and deliver to the plaintiff 62 per cent of the stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company and 62 per cent of the stock of the Mill City Development Company; that plaintiff have an abatement of the provision of said contract, or of the whole thereof for and on account of the false and fraudulent representations of the defendants, as shall be determined by the Court to be just and equitable”; that defendants last named be enjoined from voting said 62 per cent of said capital stock at any stockholders’ meeting, in favor of any disposition of said property to Loring, or to any one else, until further order of this Court. [1151]

This suit was not commenced until after the Tungsten Company and the Products Company had received from Loring on the purchase price of their property \$250,000, and Taylor had received out of that sum \$7,334.04 in settlement of his action number 2262, and not until after the debts of the companies had been paid.

Taylor's whole case rests on the truth of his allegations that false and fraudulent statements were made to him, and that he relied on them to his prejudice. The burden is on him to prove these allegations by a fair preponderance of the evidence. This in my judgment he has failed to do.

The first charge of misrepresentation is as follows: Poole, Murrish, Nenzel and Friedman, for the purpose of inducing plaintiff to undertake the contract of April 2d,

“Falsely and fraudulently and by means of telegrams and letters informed plaintiff that further and new development work had been carried on within said mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, which had developed and placed in sight, blocked out and made ready for mining, large quantities of scheelite ore of commercial value, and capable of being concentrated, and the concentrates so returned being of great value.”

About the middle of February, Taylor had Bancroft's report, showing in the mines 8111 tons of ore, commercial with tungsten selling at \$6.00 per unit; that the average price for ten years before

the war had been \$6.93; that "the average tenor of the ore was 1.75% tungsten trioxide"; and that at a market price of \$6.25 per unit, treating 100 tons per day with an 80 per cent recovery, the ore would pay expenses if it carried 1% tungsten trioxide. February 14th Nenzel wrote Taylor that conditions at the mine were exceptionally bright: [1152]

"On the number two south working we have opened up an ore body which is over 15 feet wide and a good grade of ore. On the number one south \* \* \* yesterday we relocated the ore which is of a good grade." (Exhibit 2.)

Ten days later, February 24th, Nenzel wired Taylor as follows:

"The number one drift south is 85 feet beyond granite dyke. (1) Ore low grade. Drift number one 60 feet beyond Bancroft sampling. Number two south tunnel 60 feet beyond Bancroft sampling. (2) Value of ore 11½ per cent. Number 2 north 275 feet from shaft, average width of vein 9 feet; (3) ore milling 1%. Number 2 south 100 feet beyond Bancroft sampling. Average width of vein 41½ feet. (4) Value of ore one-half of one per cent. Number 3 north drift 60 feet from shaft. Vein 10 feet wide. (5) Value of ore 11½ per cent. Number 3 south 55 feet from shaft. Five feet wide. (6) 1% ore. (7) Main working shaft has been advanced 24 feet all in good ore." (Exhibit 3.)

(The numbering in the last telegram is mine.)



Tested by Bancroft's assays (Exhibit 19), item 1 is correct. Item 2: Bancroft's assay taken 60 feet beyond his first sampling in number 2 south was 2% instead of 1.50%. The average of Bancroft's seven assays in that drift was .63%. Item 3: Bancroft's assay taken 275 feet north from the shaft in number two was 1.60% instead of 1%. Item 4 seems to be inaccurately designated. Item 5: Bancroft's nearest assays 60 feet north on number three, were 1.20% and 1.35% instead of 1.50%. Five assays taken by Bancroft within 60 feet from shaft averaged 1.89%. Item 6: Bancroft's nearest assays, 55 feet south from the shaft on number three, were .35% and .75% instead of 1%. Six assays taken by Bancroft within that 55 feet averaged 1.12%. Item 7 is correct. [1153]

How and to what extent Taylor was misled by these telegrams is shown in his letter written February 24th to Nenzel in which he says:

"In view of the present tungsten situation, I do not believe there is the remotest chance of interesting anybody in the purchase of a property at half a million dollar price. The best thing to do all around would be to close down."

This is followed by an inquiry as to whether defendants would consider selling their stock to him at a reduced price. (Exhibit 1.)

March 7th Taylor wrote the company that the results of the development work in the mine were most gratifying, and if

"they continue as well, I think there is a chance that by the beginning of April I may be

able to persuade some New York people to advance the necessary money, and clean up all the companies' indebtedness in return for some modified form of an option."

March 10th Nenzel wrote Taylor that the main shaft had been sunk to a depth of 60 feet

"since our telegram to you giving the new development work, and we are glad to inform you that we have encountered some very rich ore. The ore contains so much scheelite that we are unable to handle more than 40 tons per 24 hours in the mill when working on ore taken from the shaft. How long this will continue we do not know, but it certainly looks very encouraging."

This was literally true. At the time the letter was being written they were sinking through ore assaying, according to Bancroft, 3.55 per cent and 2.45 per cent tungstic acid, and they had just passed through some assaying as high as 5.00 per cent. (Exhibit 19.)

On the following day, March 11th, Taylor wrote the Tungsten Company, refusing to advance \$15,000 on a carload of ore to be shipped. He did not believe that a *bona fide* bid [1154] of more than \$6.00 per unit for tungsten could be gotten out of any domestic customer.

"It is possible," he says, "if I could talk the general situation over with some of you we could arrive at some solution of the entire matter. Possibly Mr. Murrish or some of the rest of you could come to Denver, and if they

come over with the idea of some financial rearrangement, it would be well for them to have a balance sheet with books, and a full statement showing the amount and present status of all the indebtedness."

March 12th Nenzel wired that the mine never looked so good. On the 21st Friedman wrote Taylor: "The mine is looking better than ever." March 25th Friedman wired Taylor, suggesting that he and Bancroft come to Lovelock for a conference as to modifying the option, and said:

"I am sure you will find mine development fulfilling your most sanguine expectations. I am confident that we could arrive at some modified arrangement as suggested in your correspondence."

On the same day, March 25th, Taylor wrote Friedman that neither he nor Bancroft could go to Lovelock, and suggested that Friedman or Poole come, or that Poole, Murrish and Nenzel be appointed a committee by the stockholders to readjust the option. "Regarding the exercise of the option, it certainly looks pretty blue at present." For a readjustment he suggested some arrangement whereby cash could be furnished to liquidate all the company's indebtedness, and he acquire 75 per cent, or all of the stock of the company, and pay for it out of future earnings.

March 27th Nenzel wrote Taylor that no accurate survey of mining development had been made since Bancroft's examination of the mines in January. He also said they had drifted both north and

south from the shaft on the fourth level, "all in exceptionally high grade ore." Bancroft later took [1155] two assays, one on the face of each drift, and about 15 feet from the shaft. The returns were 1.40 per cent and 1.45 per cent.

A comparison of Bancroft's two reports (Exhibits 15 and 19) shows that there was twice as much commercial ore blocked out in May as in the latter part of January. It also shows that the main shaft between the third and fourth levels was sunk in very rich ore. The 24 feet all in good ore mentioned by Nenzel, and the 60 feet by Friedman, were between these two levels. Bancroft reports eight assays of ore in that space as follows: 1.4, 0.75, 1.85, 5.00, 3.25, 1.85, 3.55 and 2.45 or an average of 2.51 per cent.

In view of this correspondence and Bancroft's second report, it is impossible to find that the letters and telegrams in evidence from defendants to Taylor prior to April 2, 1919, contained fraudulent misstatements, or that by anything in such letters and telegrams Taylor was misled.

The second charge of misrepresentation is that Poole, Murrish and Nenzel, at Denver, falsely and fraudulently represented to Taylor that since the examination of the mining claim by Bancroft in January, additional ore bodies had been developed, and that there was then blocked out, in sight and ready for mining over 60,000 tons of scheelite ore which would carry an average of 1.75 per cent tungstic acid; that such representations were false, made for the purpose of inducing him to undertake



and carry out the terms of the agreement of April 2d, and were relied on by him to his prejudice.

Taylor swears that Poole made the statement, but Poole denies it, and in his denial is supported by Murrish and Nenzel. They go even further, and say that prior to the time when they had agreed on the terms to be incorporated in the new agreement no statement had been made as to the tonnage in the mine. This seems unreasonable when we reflect that the selling price of a mining property depends so much on the [1156] quantity of commercial ore in sight; but nowhere in the correspondence between Taylor and defendants subsequent to April 2d and prior to June 1st, is there any mention of 60,000 tons of ore in the mine. It is not mentioned in Taylor's telegram of April 3d to Bancroft, outlining the terms of the new agreement, or in the prospectus prepared by Taylor and Thane early in May, in which it is stated that on April 1st a new survey indicated ore reserve of 41,000 tons (Exhibit "U"). In a letter dated April 17th, addressed to Roy C. McKenna, Vanadium-Alloys Steel Company (Exhibit 33), and in another of the same date addressed to the Crucible Steel Company (Exhibit 32), Taylor said:

"So far the shaft has been sunk 180 feet below the depth at the time of Bancroft's examination, and one of the upper levels extended.

\* \* \* The result is now assured minimum of 43,000 tons of ore."

May 14th Taylor wired Bancroft: "Want your statement that 40,000 tons sure with 1.4 per cent

recoverable." (Exhibit "G.") In a letter of the same day (Exhibit "N"), Thane urges Bancroft to have his report complete and available in San Francisco before May 31st:

"First on the tonnage in sight \* \* \*

This must be known in order that we may be certain there is sufficient tonnage to absolutely guarantee the \$150,000 necessary to close this transaction. \* \* \* If we are able to close it, it will be a good piece of business for all of us."

If, as Taylor states in his telegram to Thane, dated May 30th (Exhibit "L"), 20,000 tons having an average recovery of 1.46 per cent tungstic acid shows a sure profit of \$100,000, we may safely conclude that 40,000 tons would yield a sure profit of \$200,000. If there were 40,000 tons of ore in the mine capable of yielding a profit of \$200,000, it would seem to be a profitable venture on Taylor's part to loan the company [1157] \$150,000 at 7 per cent interest, if his loan were secured as provided in the contract of April 2d, and he received 62 per cent of the capital stock of the company for his services in making the loan. When he entered into the contract of April 2d he had before him Bancroft's table (Exhibit 15, p. 1), showing with a simple calculation that the net value of 8111 tons at \$9.00 per unit would be over \$61,000; the net value of 20,000 tons would be about \$150,000; of 40,000 tons about \$300,000; and of 60,000 tons about \$450,000. The price specified in the option of May 16th, paragraph 2, was \$10 per unit, and

within one week after the contract of April 2d was executed, the Tungsten Company was offered \$9.00 per unit for 100 tons. (Exhibits 7, 35 and 44.) Of course it is possible that Taylor would not have entered into the agreement of April 2d if he had not believed there were in sight in the mine 60,000 tons of commercial ore; but the testimony, as well as the probabilities, fail to prove it. His first option, January 16th, fixed a price of \$498,400, or fifty cents per share for Tungsten Company stock. February 24th he suggested the option be so modified that he might advance, as a secured loan with 7 per cent interest, enough money to pay the company's debts and purchase stock at 28 cents per share, to be paid for out of the profits of the mine after the debts were paid. Of this proposition he wrote in the same letter it "means that you would be giving me a one-half interest in the mine for liquidating our present indebtedness." This proposition was made nine days after the date of Bancroft's first report showing 8111 tons of ore in the mine. March 7th he thought there might be a chance to raise money to clear up the indebtedness in return for a modified option. March 11th he wrote the tungsten situation was so bad the market value of tungsten would probably not be placed at over \$6.00; yet within a month thereafter the company seems to have been offered \$9.00. [1158] March 25th he wrote that as to exercising the option it looked pretty blue. He suggested raising enough money to pay the debts and the acquisition by him of 75 per cent of the stock, to be paid for out of

the future earnings of the mine. (Exhibit 12.) Eight days later the agreement which is alleged to have been induced by fraudulent representations, was entered into, in which he undertook to secure by borrowing enough money to pay the debts, and for such services he was to be given 62 per cent of the capital stock. May 23d, after he learned from Bancroft that the required tonnage of 40,000 tons was exposed, but that no positive assurance could be given regarding the tungsten contents until receipt of assay returns, he wired the Tungsten Company that Bancroft's estimate, 40,000 tons, was satisfactory. (Exhibit 23.) The question naturally arises, why did Taylor say that 40,000 tons were satisfactory, if he had been led to believe, and did believe, and would not have entered into the contract if he had not believed that there were actually 60,000 tons of commercial ore in sight in the mine? It was not until attorney Jackson came to Lovelock, about May 29th, that any mention was made, or any use was attempted to be made, of the alleged fraudulent misrepresentations. There is no hint of it even in his telegram to Thane from Ogden, dated May 30th. (Exhibit "L," *supra*.) Taylor's whole conduct indicates that he was satisfied in January as to the value of the property; that he determined then to secure it. From that time on his single purpose seems to have been to obtain it as cheaply as possible, and with the smallest possible outlay of money on his part. He testifies himself (Trans. p. 85), referring to the first day of the conference at Denver, before any statements as to tonnage are



claimed to have been made: "I was willing in a general way at that time to make a contract according to the terms that were finally arranged." And again he testified in relation to Poole's alleged false representations, that he supposed he was merely getting Poole's opinion based on such developments as then existed [1159] as to how many tons would probably be there. (Trans. p. 109.) First he secured an option under which he could acquire the property by paying 50 cents per share for stock, or a total of \$498,400. In February he began to urge a modified option, because, as he said, no sale of the property at that price was possible; the tungsten market was bad; the best thing to do all around was to close down the mine. April 2d, a new, and for him a better contract was executed, under which he was to receive 62 per cent of the stock if before June 16th he obtained as a loan to the company enough money to pay its debts, estimated at \$220,000. Early in May it was understood that it would be necessary to raise a loan of about \$150,000 to pay the debts. Later he was informed there had been a mistake, the debts had been underestimated about \$5,000. He at once wired (to Poole) that he believed Poole's presence in Nevada was imperative if any deal was to be closed. He also wrote Poole two days later, on the 28th day of May, stating that he personally could not take this additional loan of \$5,000, because he had to dig to the bottom of his pockets to raise the \$150,000. He asked Poole to talk the matter over with Jackson at Lovelock. On the next day Thane wired Poole

to procure for him (Thane) an extension of thirty days to raise his \$25,000. At Lovelock Poole was informed that Bancroft's report was unfavorable, and was cautioned, according to Poole's testimony, not to inform his associates, because if they knew Taylor did not intend to go through with the deal they would not go to San Francisco; he wanted to arrange a new deal, and he thought, as Jackson also testified, he could deal with them better in San Francisco than in Lovelock. About this time, May 30th, in a telegram to Thane, he outlined a plan to have the option of April 2d extended for six months, friendly bankruptcy proceedings, himself appointed receiver, Poole appointed superintendent, agreement with the Court to exercise option whenever Bancroft would certify to 40,000 tons of ore 1.4 per [1160] cent recoverable developed. He asked Thane if he approved to wire Poole (the very person who had, as he claims, fraudulently misled him into the agreement of August 2d), urging him to favor this plan. To the telegram is added the illuminating statement: "Bancroft still believes general prospects for a big cheap mine excellent." This plan, could it have been arranged, would have enabled him to operate the mine for six months without advancing or borrowing any money for the creditors. In San Francisco, June 2d, his proposition, in substance, was to advance \$85,000, instead of \$150,000, as a secured loan, of which \$75,000 would be distributed to creditors and \$10,000 used for working capital. Taylor was to be president, Thane managing director, and Poole superintend-

ent of the new company to take over and operate the mine. When an engineer, to be selected by Taylor, certified that 20,000 tons of additional ore were blocked out, Taylor was to advance not to exceed \$65,000 more for the creditors, and for his services he was to receive 62 per cent of the stock. His advances were to be a first lien; all the creditors were to agree jointly and severally, not to embarrass him in the collection of his advances. A meeting of the creditors was called, at which they were informed Poole and his associates would abide by their judgment. The creditors promptly rejected Taylor's proposition.

In my judgment Taylor was neither misled nor deceived by the defendants. He was following consistently an original plan to secure the property for the smallest possible outlay of money on his part. His forecast as to what the creditors would do was at fault; he failed to anticipate the competition of Loring, and made an offer at San Francisco which he must have known would not be accepted if the owners had any alternative.

I find the evidence is not sufficient to show that the alleged false representations as to tonnage in the mine were made; and even if there were such representations, Taylor was [1161] not thereby induced to enter into the contract of April 2d, or to attempt to perform its conditions. That contract, as well as the option of May 16th, expired by limitation June 16, 1919; prior to that date no deposit in the Wells Fargo Nevada National Bank of San Francisco of an amount sufficient to liqui-

date the indebtedness of the defendant corporations was made by or for Taylor. He never performed what he agreed in the contract to do; he never made an unconditional offer of performance, and never prior to June 16th was he actually ready, able and willing to perform unconditionally.

It is unnecessary in view of the conclusions reached on the merits of the case, to determine other issues raised by the pleadings. Plaintiff is not entitled to a decree requiring any of the stock of the Tungsten Company, of the Products Company, or of the Development Company to be delivered to him, or to an order restraining or controlling in any manner the use or voting of such stock.

Let a decree be entered in favor of defendants in accordance with the foregoing opinion.

Each party have thirty days within which to take such steps as he may be advised.

[Indorsed]: No. B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Opinion. Filed August 10th, 1921. E. O. Patterson, Clerk. [1162]



In the District Court of the United States, in and  
for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

### **Judgment and Decree.**

This cause came on to be heard on the 14th day of September, 1920, and thereafter was argued by counsel, and thereupon and upon consideration thereof,—

It appearing to the Court that the defendants did not, nor did any or either of them, either acting for themselves or for any other person or persons, or otherwise, make to the plaintiff at any time false and fraudulent or false or fraudulent representations whatsoever;

And it further appearing to the Court that it is not true that the plaintiff was induced to enter into the contract of April 2d, 1919, a copy of which is attached to plaintiff's complaint, marked Exhibit "C," or to perform its conditions, or any or either of them, by reason of any false and fraudulent or false or fraudulent representation or representations whatsoever,

And it futher appearing to the Court that the said [1163] plaintiff never performed, or offered to perform, the covenants and agreements upon his part to be performed under the terms of said contract of April 2d, 1919, and that he was never at any time ready, able and willing to perform the said covenants and agreements of said contract, and that the plaintiff is not entitled to a decree requiring any of the stock of defendant Nevada Humboldt Tungsten Mines Company or of defendant Tungsten Products Company, or of defendant Mill City Development Company to be delivered to him, and that plaintiff is not entitled to an order restraining or controlling in any manner the use or voting of said stock, or to any equitable relief whatsoever,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that plaintiff take nothing by his bill, and that the same be, and it hereby is, dismissed, and that defendants and each of them have judgment against plaintiff for costs incurred herein, taxed as follows: defendant W. J. Loring at the sum of \$129.95/100 defendant Nevada Humboldt Tungsten Mines Company at the sum of \$150.30/100.

Done in open court this 13th day of September, 1921.

E. S. FARRINGTON,

Judge.

[Endorsed]: No. B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Co., a Corporation, Tungsten Products Co., a Corporation, et al., Defendants. Judgment and Decree. Filed Sept. 13, 1921. E. O. Patterson, Clerk. John F. Davis, Attorney at Law, Humboldt Savings Bank Building, San Francisco, California. [1164]

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In the District Court of the United States, in and for the District of Nevada.

IN EQUITY—B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a Corporation, TUNGSTEN PRODUCTS COMPANY, a Corporation, MILL CITY DEVELOPMENT COMPANY, a Corporation, W. J. LORING, C. W. POOLE, R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN, C. H. JONES, C. K. HINCH, J. T. GOODIN, V. A. TWIGG, J. C. HUNTINGTON and LENA J. FRIEDMAN, Individually,

Defendants.

**Petition for Rehearing.**

To the Honorable E. S. FARRINGTON, District Judge:

The petition of plaintiff, David Taylor, respectfully shows and represents to this Honorable Court that, being aggrieved by the decree entered in the above-entitled action on the 13th day of September, 1921, wherein this Court dismissed the plaintiff's bill of complaint, and, being aggrieved by the decision and opinion of said Court in the above-entitled cause, upon which said decree was based, respectfully petitions this Honorable Court that a rehearing of the above-entitled action be granted by the above-entitled Court, and in that behalf, and as grounds therefor, plaintiff states:

**I.**

That the evidence is insufficient to justify said decision and the decree entered pursuant thereto, and that said [1165] decision and decree entered pursuant thereto are against law.

**II.**

Errors at law occurred during the trial, excepted to by plaintiff.

Dated: this 27th day of September, 1921.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

[Endorsed]: B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff vs. Nevada Humboldt



Tungsten Mines Company, a Corporation, et al.,  
Defendants. Petition for Rehearing. Filed this  
30th day of Sept. 1921. E. O. Patterson, Clerk.  
By O. E. Benham, Deputy. Hoyt, Norcross,  
Thatcher, Woodburn & Henley, Reno, Nevada.  
Attorneys for Plaintiff. [1166]

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In the District Court of the United States, in and  
for the District of Nevada.

IN EQUITY—B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Order to Show Cause.**

Upon reading the petition for rehearing of the  
plaintiff in *the entitled* action, it is hereby OR-  
DERED that defendants, at 10 o'clock A. M., on the  
15th day of October, or as soon thereafter as the

business of the Court will permit, show cause, if any they have why said petition for rehearing should not be granted.

Dated: This 30th day of September, 1921.

E. S. FARRINGTON,

District Judge.

[Endorsed]: In Equity—B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Order to Show Cause. Filed this 30th day of Sept. 1921. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada. Attorneys for Plaintiff. [1167]

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In the District Court of the United States, in and  
for the District of Nevada.

IN EQUITY—B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.  
W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Stipulation Continuing Hearing Argument on Rehearing.**

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the setting of the argument on rehearing in the above-entitled case now set for October 15th, may be vacated, and that the same be set for hearing on the 25th day of October, 1921.

Dated: this 13th day of October, 1921.

HOYT, NORCROSS, THATCHER, WOOD-  
BURN, & HENLEY,

WM. WOODBURN,

Attorneys for Plaintiff.

COOKE, FRENCH & STODDARD,

Attorneys for Plaintiff.

JNO. F. DAVIS and

CHAS. S. WHEELER,

Per H. R. COOKE,

Attorneys for Deft. Loring. [1168]

[Endorsed]: In Equity—No. B-7. In the District of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company et al., Defendants. Stipulation. Filed this 15th day of Oct. 1921. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada. Attorneys for Plaintiff. [1169]

## MINUTES OF COURT—OCTOBER 15, 1921.

No. B-7.

DAVID TAYLOR

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
CO., et al.**Minutes of Court—October 15, 1921—Order Continuing Hearing of Arguments on Petition for Rehearing to October 25, 1921.**

Upon stipulation of counsel filed herein this day, it is ordered that the hearing of arguments on the petition for a rehearing, be, and the same is hereby, continued to and until October 25, 1921, at ten o'clock A. M. [1170]

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In the District Court of the United States, in and for the District of Nevada.

B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING, C.



W. POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, C. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Stipulation Submitting Plaintiff's Petition for  
Rehearing.**

IT IS HEREBY STIPULATED that plaintiff's petition for a rehearing in the above-entitled case and the answer thereto of the defendants may, subject to the approval of the Court, be submitted to said Court for its decision thereon without argument and that counsel for either party may call said matter up at any time without notice and have the same finally submitted.

Dated: November 2, 1921.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

COOKE, FRENCH & STODDARD,

Attorneys for Defendants, Other than W. J.  
Loring.

JOHN F. DAVIS and

CHAS. S. WHEELER, Jr.,

Per C.,

Attorneys for Defendant, W. J. Loring.

[Endorsed]: Original. No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, et al., Defendants.

Stipulation. Filed this 3d day of Nov. 1921. E. O. Patterson, Clerk. By O. E. Benham, Deputy. Cooke, French & Stoddard, Reno, Nevada. Attorneys for Defendants, Other Than W. J. Loring. [1171]

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No. B-7.

DAVID TAYLOR,

Complainant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
CO., et al.

**Minutes of Court—November 8, 1921—Order Denying Plaintiff's Petition for Rehearing.**

Mr. H. R. Cooke, attorney for the defendants, appeared this day, and, upon stipulation of counsel filed herein, presented to the court plaintiff's petition for a rehearing, defendant's answer thereto and his statement that no further argument was contemplated or desired; thereupon, upon motion of counsel, it is ordered that this matter be, and the same is hereby, submitted. It is further ordered that plaintiff's petition be, and the same is hereby, denied. [1172]

In the United States District Court, in and for the  
District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, J. H. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.

**Stipulation Continuing Hearing on Proposed  
Statement of Facts.**

It is hereby stipulated that the hearing of plain-  
tiff's notice and proceeding to have his proposed  
statement of facts settled may be postponed and the  
same heard on April 10th, 1922, at eleven o'clock  
A. M. of that day, or as soon thereafter as counsel  
can be heard.

Otherwise this stipulation is made without pre-  
judice to but expressly reserving all rights that the  
parties hereto may have in the premises.

Dated February 28th, 1922.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

CHAS. S. WHEELER and

JNO. F. DAVIS,

Per C.,

Attorneys for Defendant W. J. Loring.

COOKE, FRENCH & STODDARD,

Attorneys for All Other Defendants.

[Endorsed]: Original. No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, et al., Defendants. Stipulation. Filed this 1st day of Mar. 1922. E. O. Patterson, Clerk. Cooke, French & Stoddard, Reno, Nevada. Attorneys for Defendants. [1173]

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MINUTES OF COURT—MARCH 6, 1922.

No. B-7.

DAVID TAYLOR

vs.

NEVADA HUMBOLDT TUNGSTEN MINES CO.

**Minutes of Court—March 6, 1922—Order Continu-  
ing Hearing on Settlement of Statement of  
Facts.**

No counsel appearing, it is ordered that the hearing upon the settlement of statement be, and the same is hereby, continued until the next motion day.



MINUTES OF COURT—APRIL 3, 1922.

No. B-7.

DAVID TAYLOR

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
CO. et al.

**Minutes of Court—April 3, 1922—Order Continuing Hearing on Motion to Settle Statement of Facts.**

No counsel appearing, IT IS ORDERED that the hearing on the motion to settle statement of facts be, and the same is hereby, continued to and until the next motion day.

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MINUTES OF COURT—APRIL 10, 1922.

No. B-7.

DAVID TAYLOR.

Complainant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
CO. et al.,

Defendants.

**Minutes of Court—April 10, 1922—Order Continuing Hearing of Statement of Facts.**

Upon motion of Mr. H. R. Cooke, attorney for the defendants, IT IS ORDERED that the order

heretofore made and entitled herein setting the hearing of statement of facts for the 17th day of this month be, and the same is hereby, vacated and the same to be reset by counsel. [1174]

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In the United States District Court, in and for the  
District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, H. J. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.

**Stipulation Continuing Hearing on Proposed  
Statement of Facts.**

IT IS HEREBY STIPULATED AND AGREED  
that the hearing of plaintiff's notice and proceeding  
to have his proposed statement of facts settled may  
be postponed and the same heard on May 25th,  
1922, at eleven o'clock A. M. of that day, or as soon  
thereafter as counsel can be heard.

It is further stipulated that the defendants above named waive any objections or right to object that they may have that the hearing and proceeding to have plaintiff's proposed statement of facts settled is not in time or will not be in time as above specified.

Dated: April 20th, 1922.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

CHAS. S. WHEELER and

JOHN F. DAVIS,

Per C.,

Attorneys for Defendant Loring.

COOKE, FRENCH & STODDARD,

Attorneys for All Other Defendants.

[Endorsed]: No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, et al., Defendants. Stipulation. Filed this 22d day of April, 1922. E. O. Patterson, Clerk. Cooke, French & Stoddard, Reno, Nevada. Attorneys for Defendants. [1175]

In the United States District Court, in and for the  
District of Nevada.

IN EQUITY—No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, J. H. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants,

**Petition for Appeal and Order Allowing Same.**

To the Honorable E. S. FARRINGTON, District  
Judge:

The above-named plaintiff feeling himself ag-  
grieved by the decree made and entered in this cause  
on the 13th day of September, 1921, does hereby  
appeal from said decree to the Circuit Court of Ap-  
peals for the 9th Circuit, for the reasons specified  
in the assignment of errors, which is filed herewith,  
and he prays that his appeal be allowed and that  
citation issue as provided by law, and that the tran-  
script of the record, proceedings and papers upon



which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Circuit, sitting at the City and County of San Francisco, State of California.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff.

Filed May 1st, 1922, in the District Court of the United States for the District of Nevada. [1176]

The foregoing petition is granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Fifteen Hundred Dollars.

E. S. FARRINGTON,

District Judge.

[Endorsed]: No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corp., Tungsten Products Company, a Corp., Mill City Development Co., a Corp., W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg et al., Defendants. In Equity No. B-7. Petition for Appeal. Filed this 1st day of May, 1922. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada, Attorneys for Plaintiff. [1177]

In the United States District Court, in and for the  
District of Nevada.

IN EQUITY—No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, H. J. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.

**Bond on Appeal.**

KNOW ALL MEN BY THESE PRESENTS:  
That we, David Taylor, as principal, and National  
Surety Company of New York as surety, acknowl-  
edge ourselves to be jointly and firmly bound to  
Nevada Humboldt Tungsten Mines Company, a  
Corporation, Tungsten Products Company, a Cor-  
poration, Mill City Development Company, a Cor-  
poration, W. J. Loring, C. W. Poole, R. Nenzel,  
H. J. Murrish, L. A. Friedman, C. H. Jones, G. K.  
Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington

and Lena J. Friedman, appellees in the above cause, in the sum of Fifteen Hundred (1500) Dollars, conditioned that, whereas, on the 13th day of September, 1921 in the District Court of the United States for the District of Nevada, in a suit depending in that court, wherein David Taylor was plaintiff and Nevada Humboldt Tungsten Mines Company, a Corporation, [1178] Tungsten Products Company, a Corporation, Mill City Development Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, were defendants, numbered on the equity docket as B-7, a decree was entered against said David Taylor, and said David Taylor having obtained an appeal to the Circuit Court of Appeals of the United States for the 9th Circuit, and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to said Nevada Humboldt Tungsten Mines Company, a Corporation, Tungsten Products Company, a Corporation, Mill City Development Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the 9th Circuit, to be holden in the city and county of San Francisco, in the State of California, on the 2d day of October, 1922.

Now, if said David Taylor shall prosecute his appeal to effect and answer all costs if he fail to make his appeal good, then the above obligation to be void, otherwise to remain in full force and effect,

Dated: April 29, 1922.

DAVID TAYLOR,

By GEO. B. THATCHER,

His Attorney in Fact.

NATIONAL SURETY COMPANY.

By F. J. PECK,

By W. M. GARDINER,

Its Attorneys in Fact. (Seal)

Approved: May 1st, 1922.

E. S. FARRINGTON,

District Judge for the District of Nevada. [1179]

[Endorsed]: No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, etc., et al., Defendants. Bond on Appeal. Filed this 1st day of May, 1922. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Reno, Nevada, Attorneys for Plaintiff. [1180]



In the District Court of the United States, in and  
for the District of Nevada.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, J. H. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually.

Defendants.

**Praeceptum for Transcript of Record.**

To the Honorable E. O. PATTERSON, Clerk,  
United States District Court, in and for the  
District of Nevada.

You are hereby requested to prepare and certify  
to the United States Circuit Court of Appeals for  
the 9th Circuit, sitting at San Francisco, transcript  
on appeal in the above-entitled case, and the plain-  
tiff-appellant hereby designates and indicates por-  
tions of the records, papers and files to be incor-  
porated in the transcript on appeal as follows:

- (1) Pleadings.
- (2) Restraining order.

- (3) Statement of the evidence, together with a certificate of the Court or Judge approving the same.
- (4) Opinion of the Court filed August 25, 1921. [1181]
- (5) Final decree.
- (6) Petition for rehearing.
- (7) Order denying petition for rehearing.
- (8) Petition for appeal and order granting the same.
- (9) Citation on appeal and proof of service thereof.
- (10) Stipulations of the parties of date of April 20, 1922, relative to settlement of plaintiff's proposed statement of the evidence.
- (11) Praecipe and proof of service thereof.

You are also to incorporate in the record original of Exhibit 15; original Exhibit 20, a map, plate 5A: Exhibit "Y," a mine map.

Dated: This 1st day of May, A. D. 1922.

NORCROSS, THATCHER & WOODBURN.

Service by copy of the above praecipe for transcript is hereby acknowledged this 5th day of May, 1922.

CHAS. S. WHEELER and

JOHN F. DAVIS,

Per C.,

Attorneys for Defendant W. J. Loring.

COOKE, FRENCH & STODDARD,

Attorneys for All Other Defendants.

[Endorsed]: No. B-7. In the District Court of the United States, in and for the District of

Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Co., a Corporation, Tungsten Products Company, a Corporation, Mill City Development Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, J. H. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, Individually, Defendants. Praecipe for Transcript. Filed May 1, 1922. E. O. Patterson, Clerk. Hoyt, Norcross, Thatcher, Woodburn & Henley, Attorneys at Law, Reno National Bank Building, Reno, Nevada. [1182]

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In the District Court of the United States, in and  
for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, et al.

Defendants.

**Stipulation Continuing Hearing on Proposed Statement of Facts.**

It is hereby stipulated that the hearing and all proceedings in connection with the citation and order to show cause why decree and order of the above-entitled court in said cause should not be appealed from by the plaintiff, including the hearing on appellees' amendments and proposed amend-

ments and praecipe for additional portions of record, and the settlement of appellant's proposed statement on appeal, be continued from May 25th, 1922, as now set and the same be heard by said Court on June 9th, 1922, at ten o'clock A. M. of that day.

Dated: May 23d, 1922.

HOYT, NORCROSS, THATCHER, WOOD-  
BURN & HENLEY, THATCHER,

Solicitors for Appellant.

CHAS. S. WHEELER and

JOHN F. DAVIS,

Per C.,

Solicitors for W. J. Loring.

COOKE, FRENCH & STODDARD,

Solicitors for All Other Appellees.

[Endorsed]: Original. No. B-7. In the United States District Court in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Stipulation. Filed this 25th day of May, 1922. E. O. Patterson, Clerk. Cooke, French & Stoddard, Reno, Nevada, Attorneys for Appellees. [1183]

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No. B-7.

DAVID TAYLOR,

Complainant,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY et al.



**Minutes of Court—May 25, 1922—Order Continuing Hearing of Statement of Evidence to June 9, 1922.**

Upon motion of Mr. Geo. B. Thatcher, Attorney for the complainant, consent thereto being given by Mr. H. R. Cooke, attorney for the defendants, IT IS ORDERED, that the hearing on and settlement of the statement of evidence be, and the same is hereby, continued to the 9th day of June, 1922, at ten o'clock A. M. [1184]

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In the District Court of the United States, in and for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, H. J. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,  
Defendants.

**Order Extending Time to and Including June 29, 1922, to File Record and Docket Cause.**

Upon motion of Mr. George B. Thatcher, attorney for the plaintiff herein, and consent thereto being given by Mr. H. R. Cooke, attorney for defendants,—

IT IS ORDERED that plaintiff have to and until June 29th, 1922, within which to perfect and file his record on appeal in the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that this order be entered *nunc pro tunc* as of May 30th, 1922.

June 9, 1922.

Done in open court.

E. S. FARRINGTON,  
District Judge.

[Endorsed]: No. B-7. In the District Court of the United States for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Order Extending Time to File Record on Appeal. Filed June 9, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy. Hoyt, Norcross, Thatcher, Woodburn & Henley, Attorneys at Law, Reno, Nevada, Attorneys for Plaintiff. [1185]

In the District Court of the United States, in and  
for the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COM-  
PANY, a Corporation, W. J. LORING,  
C. W. POOLE, R. NENZEL, H. J. MUR-  
RISH, L. A. FRIEDMAN, C. H. JONES,  
G. K. HINCH, J. T. GOODIN, V. A.  
TWIGG, J. C. HUNTINGTON and LENA  
J. FRIEDMAN, Individually,

Defendants.

**Order Extending Time to and Including July 29,  
1922, to File Record and Docket Cause.**

Upon motion of plaintiff, and good cause ap-  
pearing therefor,

IT IS ORDERED that plaintiff have to and  
until July 29, 1922, within which to perfect and file  
his record on appeal in this case.

Done in open court this 29th day of June, 1922.

E. S. FARRINGTON,

District Judge.

[Endorsed]: No. B-7. In the District Court of  
the United States for the District of Nevada.

David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, et al., Defendants. Order Extending Time to File Record on Appeal. Filed June 29, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy. Hoyt, Norcross, Thatcher, Woodburn & Henley, Attorneys at Law, Reno, Nevada, Attorneys for Plaintiff. [1186]

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In the District Court of the United States, in and  
for the District of Nevada.

No. B-7—IN EQUITY.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, et al.,  
Defendants.

**Certificate of Clerk U. S. District Court to Trans-  
script of Record.**

United States of America,  
District of Nevada,—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the above-entitled cause.



I further certify that the attached transcript, consisting of 1194 typewritten pages, numbered from 1 to 1194, contains a full, true and correct transcript of the proceedings in said cause and of all pleadings filed therein, together with the endorsements of filing thereon, consisting of four (4) volumes (Volumes 1 and 2 being the Settled and Agreed Statement of Evidence, Volume 3 copies of the Exhibits, and Volume 4 the pleadings in the cause), as set forth in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appears from the originals [1187] of record and on file in my office as such clerk in the City of Carson, State and District aforesaid. Also with the above-mentioned transcript are Plaintiff's Original Exhibit No. 15 (Mine Report by Howland Bancroft), Plaintiff's Original Exhibit No. 20 (a mine map, Plate 5A), and Defendant's Original Exhibit "Y" (a mine map), not attached but herewith enclosed, it being impracticable to incorporate copies of them in the record.

I further certify that the cost of preparing and certifying to said record, amounting to \$539.60, has been paid to me by Messrs. Hoyt, Norcross, Thatcher, Woodburn & Henley, attorneys for plaintiff in the above-entitled cause.

And I further certify that the original assignment of errors and the original Citation, issued in this cause, are hereto attached.

WITNESS my hand and the seal of said United States District Court this 26th day of July, 1922.

[Seal] E. O. PATTERSON,  
Clerk, U. S. District Court, District of Nevada.  
[1188]

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In the United States District Court, in and for  
the District of Nevada.

No. B-7.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES  
COMPANY, a Corporation, TUNGSTEN  
PRODUCTS COMPANY, a Corporation,  
MILL CITY DEVELOPMENT COMPANY,  
a Corporation, W. J. LORING, C. W.  
POOLE, R. NENZEL, H. J. MURRISH,  
L. A. FRIEDMAN, C. H. JONES, G. K.  
HINCH, J. T. GOODIN, V. A. TWIGG,  
J. C. HUNTINGTON and LENA J. FRIED-  
MAN, Individually,

Defendants.

**Citation.**

United States of America to Nevada Humboldt  
Tungsten Mines Company, a Corporation, Tung-  
sten Products Company, a Corporation, Mill City  
Development Company, a Corporation, W. J.  
Loring, C. W. Poole, R. Nenzel, H. J. Murrish,

L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, Individually, GREETING:

You are hereby notified that in a certain case in equity in the United States District Court in and for the District of Nevada, wherein David Taylor is plaintiff and Nevada Humboldt Tungsten Mines Company, a corporation, Tungsten Products Company, a corporation, Mill City Development Company, a corporation, W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, are defendants, [1189] an appeal has been allowed the plaintiff therein to the Circuit Court of Appeals of the United States for the 9th Circuit. You are hereby cited and admonished to be and appear in said Court, at San Francisco, State of California, thirty (30) days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable E. S. FARRINGTON, Judge of the United States District Court for the District of Nevada, this 1st day of May, 1922.

[Seal]

E. S. FARRINGTON,  
United States District Judge.

Service by copy of the above citation is hereby acknowledged, this 5th day of May, 1922.

CHAS. S. WHEELER and

JOHN F. DAVIS,

Attorneys for Defendant W. J. Loring.

COOKE, FRENCH & STODDARD,

Attorneys for All Other Defendants. [1190]

[Endorsed]: No. B-7. In the United States District Court, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, etc., et al., Defendant. Citation. Filed this 6th day of May, 1922. E. O. Patterson, Clerk. ———, Deputy.

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In the District Court of the United States, in and for the District of Nevada.

B-7—IN EQUITY.

DAVID TAYLOR,

Plaintiff,

vs.

NEVADA HUMBOLDT TUNGSTEN MINES COMPANY, a Corporation, TUNGSTEN PRODUCTS COMPANY, a Corporation, MILL CITY DEVELOPMENT COMPANY, a Corporation, W. J. LORING, C. W. POOLE, R. NENZEL, H. J. MURRISH, L. A. FRIEDMAN, C. H. JONES, G. K. HINCH, J. T. GOODIN, V. A. TWIGG, J. C. HUNTINGTON and LENA J. FRIEDMAN, Individually,

Defendants.



### **Assignment of Errors.**

Comes now the plaintiff in the above-entitled action and files the following assignment of errors upon which he relies in the prosecution of his appeal of the above-entitled cause from the decree made by this Honorable Court on the 13th day of September, 1921:

#### **I.**

That the Court erred in making and entering its final decree in favor of the defendants and against the plaintiff and that said decree is not supported by and is contrary to the evidence, and is against law.

#### **II.**

That the Court erred in failing and refusing to enter a decree in favor of the plaintiff, awarding to the plaintiff sixty-two per cent (62%) of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two per cent (62%) of the stock of [1191] the Tungsten Products Company and sixty-two per cent (62%) of the stock of the Mill City Development Company, and the finding of the Court and the decree entered pursuant thereto against the plaintiff and in favor of the defendants is contrary to the evidence and not supported thereby, and is against law.

#### **III.**

That the Court erred in finding that the plaintiff had failed to establish by a fair preponderance of the evidence, that the defendants, Poole, Mur-

rish, Nenzel and Friedman, for the purpose of inducing plaintiff to undertake the contract, had falsely and fraudulently, by means of telegrams and letters, informed plaintiff that further and new development had been carried on within the mines and mining claims of the Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and made ready for mining, large quantities of scheelite ore of commercial value and capable of being concentrated, the concentrates so returned being of great value.

#### IV.

That the Court erred in finding that the representations made by the defendants through Nenzel, by telegrams of date of Feb. 14, 1919 (Exhibit 2), of Feb. 24, 1919 (Exhibit 3), telegram of Nenzel of March 12, 1919 (Exhibit 8), letter of Nenzel of March 21, 1919 (Exhibit 9), telegram of Friedman of March 25, 1919 (Exhibit 10), letter of Nenzel of March 27, 1919 (Exhibit 13), were true and that by said telegrams or letters or any of the letters or telegrams made prior to the execution of the contract of April 2, 1919 (Exhibit 16), the plaintiff was not misled and said finding was contrary to the evidence and is not supported by the evidence, and is against law.

#### V.

That the Court erred in finding that plaintiff had failed [1192] to establish by a fair preponderance of the evidence that Poole, Murrish or Nenzel, had, at Denver, falsely and fraudulently represented to plaintiff that since the ex-

amination of the mining claims of the Nevada Humboldt Tungsten Mines Company by Bancroft in January, additional ore had been blocked out and there had been made ready for mining over sixty thousand (60,000) tons of scheelite ore carrying an average of one hundred and seventy-five per cent (175%) tungstic acid and in finding that plaintiff was not misled or deceived by the defendants, and the same is contrary to the evidence and is not supported by the evidence and is against law.

VI.

That the Court erred in making the following finding: "I find the evidence is not sufficient to show that the alleged false representations as to tonnage in the mine were made; and even if there were such representations, Taylor was not thereby induced to enter into the contract of April 2d or to attempt to perform its conditions." Said finding is contrary to the evidence and is not supported by the evidence, and is against law.

VII.

That the Court erred in its opinion and decision filed Oct. 10, 1921 and the findings therein and in the whole thereof and in the conclusions therefrom, and that said opinion upon which the decree was entered is contrary to the evidence and is not supported by the evidence, and is against law.

VIII.

That the Court erred in overruling and denying plaintiff's petition for rehearing.

IX.

That the Court erred in finding that plaintiff

had not [1193] acted and relied upon the representations made by the defendants and said finding is contrary to the evidence and is not supported by the evidence and is against law.

NORCROSS, THATCHER & WOOD-  
BURN,

Attorneys for Plaintiff. [1194]

[Endorsed]: No. B-7. In the District Court of the United States, in and for the District of Nevada. David Taylor, Plaintiff, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, Tungsten Products Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, J. H. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, Individually. Assignment of Errors. Filed May 1, 1922. E. O. Patterson, Clerk.

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[Endorsed]: No. 3902. United States Circuit Court of Appeals for the Ninth Circuit. David Taylor, Appellant, vs. Nevada Humboldt Tungsten Mines Company, a Corporation, Tungsten Products Company, a Corporation, Mill City Development Company, a Corporation, W. J. Loring, C. W. Poole, R. Nenzel, H. J. Murrish, L. A. Friedman, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg, J. C. Huntington and Lena J. Friedman, Individually, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Nevada.



Filed July 28, 1922.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

**Plaintiff's Exhibit No. 15.**

[Endorsed]: B-7. Plffs. 15. U. S. District Court, District of Nevada. David Taylor vs. Nevada-Humboldt Tungsten Mines et al. Filed Sept. 14, 1920. T. J. Edwards, Clerk. By E. O. Patterson, Deputy.

No. 3902. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 28, 1922. F. D. Monckton, Clerk.

**REPORT**

On a Preliminary Investigation of the  
NEVADA-HUMBOLDT TUNGSTEN MINE  
At Tungsten, Humboldt County, Nevada  
By Howland Bancroft.  
Denver, Colorado, February 15, 1919.

**REPORT**

On a Preliminary Investigation of the  
NEVADA-HUMBOLDT TUNGSTEN MINE  
At Tungsten, Humboldt County, Nevada.

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Appendix "C." Shipping Concentrates on Hand. From a Statement Submitted by Nevada-Humboldt Tungsten Mines Company.

Appendix "D." Sulphide Concentrates on Hand. From a Statement Submitted by the Nevada-Humboldt Tungsten Mines Company.

## SUMMARY OF RESULTS OF EXAMINATION.

GENERAL STATEMENT: The mining property of the Nevada-Humboldt Tungsten Mines Company is under option to Mr. David Taylor. This option expires July 16, 1919. The past production of this property and a preliminary examination of the mine made by the writer of this report last November, indicated a promising commercial prop-

osition. The present investigation was made to determine the actual grade of ore in the developed portions of the mine and was undertaken with the knowledge that only a small tonnage of ore was actually exposed. Naturally, if the grade of this tonnage proved too low to represent a commercial proposition, no further interest would attach to the option. Consequently, the examination became in reality a preliminary investigation. The report, however, represents a detailed description of the Nevada-Humboldt Tungsten Mine as it appeared at the time of the examination, namely, from January 17th to 27th, 1919.

**TONNAGE AND VALUE OF INDICATED ORE:** There is no ore developed on four sides. The ore which is summarized in this report, as indicated, is not fully developed but has been exposed on one, two or three sides. A detailed summary of indicated ore will be found on page 7 of this report.

The investigation disclosed 8111 tons of ore which is commercial with tungsten selling at \$6.00 a unit. The average tenor of this ore is 1.75% tungsten trioxide ( $\text{WO}_3$ ). This ore, therefore, contains 141.93 tons  $\text{WO}_3$ . of which 80% is recoverable, or 113.544 tons  $\text{WO}_3$ . which equals 11354.4 units  $\text{WO}_3$ . The total cost of mining and milling this tonnage at \$5.00 per ton will be \$40,555.00. Consequently the value of this indicated tonnage is as follows:



Market Price Per Unit	Gross Value of Indicated Ore	Net Value of Indicated Ore
\$ 6.00 .....	\$ 68,126 .....	\$ 27,571
8.00 .....	90,835 .....	50,280
10.00 .....	113,544 .....	72,989
12.00 .....	136,252 .....	95,697
14.00 .....	158,961 .....	118,406
16.00 .....	181,670 .....	141,115
13.00 .....	.....	107,052

Of this tonnage\*, 60% containing 60% of the total tungsten contents of the indicated ore is exposed on two sides; 25% containing 27.4+% of the total tungsten content is exposed on two sides and partially exposed on a third side; and the balance, or 15%, containing 12.4+% of the total tungsten content of the indicated ore is exposed on one side (See page 7 this report for tabulated statement of indicated ore calculated from the assay plan, Plate 5).

An additional tonnage, not sampled, is exposed above number 1 level. This ore was not sampled in view of the probability of its being extracted and milled during the life of the option. Furthermore, there is an additional tonnage in the blocks designated as indicated ore, the cubic contents and assay value of which cannot be definitely calculated because of the fact that in but few instances could samples be cut from wall to wall.

## CONCLUSIONS:

1. From many viewpoints the property is one of the most favorably situated tungsten mines in the United States. It is one of the few containing an

ore body which is commercial under pre-war market prices for this product and present high priced labor, supply and material conditions. At a market price of \$6.25 per unit, treating 100 tons of ore per day with an 80% recovery, tungsten ore from this ore body will pay expenses if it runs 1%  $\text{WO}_3$ . (As previously stated, the average tenor of the 8111 tons of indicated ore is 1.75%  $\text{WO}_3$ . The average market price of tungsten trioxide for 10 years prior to the war was \$6.93 per unit.)

2. The ore values occur in apparently well defined shoots which have a remarkably even value, as indicated by the assay plan, and, generally speaking, the mineralization is decidedly uniform notwithstanding the fact that the ore body belongs to a class of erratic igneous metamorphic deposits.

3. The development program outlined (See Plate 5) and in progress, if continued in ore, should put in sight during the option a sufficient amount of ore to make the property an attractive commercial proposition even though the market price of tungsten trioxide reaches a pre-war level.

#### RECOMMENDATIONS:

1. That the progress of the development program be systematically followed, and if feasible that a detailed sampling of the new workings be arranged to follow closely the development.

2. A fraction claim located in the center of the Company holdings and owned by outside interests should be acquired at a very reasonable figure in the

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\*Throughout this report, short tons of 2000 lbs. are used, and a unit represents 20 lbs.  $\text{WO}_3$ .

event it is decided to exercise the option. In any event, the Company should obtain an option on this ground in the near future, as such an option may now be obtained at a low figure.

### DESCRIPTION OF PROPERTY.

GENERAL: The location, claims, topography, geology, underground workings and results of sampling are shown in detail on Plates 1 to 6, and a careful study of these plates will materially assist in a more rapid and thorough understanding of the subject matter of this report.

The property is located about nine miles by wagon road north of Mill City, a station on the Southern Pacific Railroad (See Plate 1). Water is pumped about four miles to the property from a well located half a mile west of the Humboldt River, and an adequate supply for all milling and camp purposes appears to be assured. There is no timber on the ground and this must be shipped in. As the mine requires very little timbering this item has not become a serious one. There is no fuel near the property and this also is shipped in. Power is obtained from the Nevada Valley's Power Company, which furnishes electric power for the mine and mill, and for lighting the camp.

HOLDINGS: There are four lode claims, White Rock, Sky High, Gross No. 2 and Gross No. 3, which are held by location. There are also 80 acres in the S. E.  $\frac{1}{4}$  of Sec. 27 T. 34 N., R. 34 E., Mt. Diablo Base and Meridian, which were purchased outright from the Central Pacific Company and for which the Nevada-Humboldt Tungsten Mines Com-

pany holds deed. These 80 acres are patented, bearing date December 14, 1905 (See Plate 2).

**TOPOGRAPHY:** The workings are located in low rounded and gently sloping hills which form outliners to the east of the Eugene Mountains. The elevation of the top of these hills is about 1000 feet above the Humboldt River some four miles to the east. The hills are covered by a few inches to several feet of detrital material and rock exposures are not numerous. Consequently, the location of the deposits on the surface has been determined in a large measure by trenching (See Plates 1 and 4).

**GEOLOGY:** The rocks in the immediate vicinity of the deposit consist of a sedimentary series of shales, slates and schists, with intercalated thin bands or lenses of limestone, which are locally mar-maraceous and in places garnetized. These rocks have been intruded by granitic masses which have tilted the sediments at steep angles, and in places dikes from the intrusive masses extend into and cut across the sedimentary series, as evidenced in the underground workings of the mine. Plate 3, a carefully and accurately prepared geological map furnished by the Company, clearly illustrates the areal geology of the district.

**HISTORY:** Prospectors and lessees had done an appreciable amount of work upon the property prior to the operations of this Company. This resulted in opening up some surface showings, the total production from which, however, has been of no real importance.



The mining company was formed early in 1918 and until the end of August of the same year literally mined ore from the grass roots down, which material was transported by wagon to Mill City, thence shipped by railroad to Toulon where it was concentrated. These operations resulted in the production of over 7700 tons of ore which had an estimated average grade of 2.5%  $\text{WO}_3$ , from which concentrates containing over 235,000 lbs. of  $\text{WO}_3$  were obtained and sold for over \$270,000.00—a remarkably good record. Since November, ore from the mine has been treated in the company mill, a modern 100-ton concentrator, which commenced operations in the late fall and which treated up to January 13th, 1919, some 3456 tons of ore, from which concentrates were produced containing 83,558 lbs.  $\text{WO}_3$  (See Appendices “B,” “C” and “D,” statements of production furnished by the Company).

**EQUIPMENT:** The mine is equipped with an electric hoist and skip adequate for all hoisting operations which seem probable in connection with this deposit. There is also a compressor plant adequate for present requirements. Mine cars, track and a well stocked store room form a part of the mine equipment. The engine house, office, store room and various mine buildings and bunk houses are substantially constructed. The 100-ton tungsten mill built on the property by the Tungsten Products Company, owned by the same interests, is thoroughly modern and has treated a sufficient

amount of material to demonstrate its adaptability to the type of ore found in this deposit.

A flow sheet of the mill will be found in Appendix "A," which flow sheet was supplied by the constructing engineers who designed and built the plant. While the rated capacity of this mill is 100 tons, there seems little doubt that it will readily treat upwards of 120 tons of material per day.

DEVELOPMENT: The principal development on the property is a shaft on the vein, which at the time of the investigation was 240 feet deep on the incline, from which two levels have been driven, which are shown in detail on Plate 6 and which comprise over 1000 feet of drifting on the ore zone. Four short adit tunnels totaling over 500 feet of work, have been driven on or near this ore zone above the level of the shaft, some surface trenching has been accomplished and a 50 foot shaft has been sunk on the Carlson vein some 500 feet to the northwest of the S. P. shaft. However, the developments other than the main workings are simply indicative of ore occurrences.

### THE ORE DEPOSIT.

The ore deposit represents a shear zone in the sedimentary series which has a northeast-southwest strike and a steep dip to the northwest. This shear zone throughout a large portion, occupies the same horizon as the marmaraceous limestone lenses exposed in the main workings, or is just to the northwest. Mineralizing solutions, probably emanations from the intrusive granite, have permeated the sedimentary series and impregnated the same with

pyrite, and on encountering the limestone, a receptive medium, have deposited tungsten in the form of scheelite in gangue of brecciated country rock, quartz, garnet, epidote and pyrite. The ore bearing zone has been proved by developments on this and an adjoining property to extend over a strike distance of more than 2000 feet, which zone of course is not continuously mineralized, although ore shoots have been definitely proved to exist in places throughout its course. The average stoping width as demonstrated underground, is from  $4\frac{1}{2}$  to 5 feet, and a considerable amount of ore has been left on the walls. The deepest working is over 500 feet below the highest outcrop of the ore zone on this property. The depth of the zone of oxidation has not been definitely determined and its boundaries are very irregular.

The ore body was sampled, as indicated on Plate 5, on both the first and second levels and in the shaft. On the levels 10 foot intervals were used between samples, and in the shaft 5 and  $7\frac{1}{2}$  foot intervals. The samples were cut with the aid of a small air drill, the spoil being caught in large canvas bags. The samples varied in weight from 20 to 40 lbs., the average being about 30 lbs. Trenches ranging in width from 3 to 4 inches and in depth from 2 to 3 inches, were cut across the ore body. In but few instances was it possible to obtain samples extending from wall to wall, and there is no doubt that an additional 2000 to 3000 tons of ore remains unsampled and consequently cannot be included in the indicated ore tabulation. The sam-

ples were taken to a laboratory where they were crushed in a Braun crusher and quartered in a Braun sampling machine. Samples in parcels weighing about 5 lbs. were shipped to Mr. Hugh Watts at Boulder with instructions to crush all of the material to pass 30 mesh before further quartering. The assaying was done by Mr. Watts at Boulder. Of a total of 97 samples taken in the main workings, all but four showed some tungsten content, and only 37 were non-commercial under the conditions existing at this property and assuming a market price of \$6.25 a unit. The average tungsten content of the indicated ore is 1.75% and this ore represents a total of 8111 tons as follows:

		Avg. $\text{WO}_3$	
		Tons	Contents
Block A	933	x 1.46=	1362.18
" B	277	x 1.47=	407.19
" C	2029	x 1.92=	3895.68
" D	2535	x 1.88=	4765.80
" E	2337	x 1.61=	3762.25
<hr/>		<hr/>	
Total	8111		14193.10 or an average of 1.75% $\text{WO}_3$

**COSTS:** The total costs of mining and milling as determined by operations at the property, have been \$2.36 and \$1.50 respectively. This is of course subject to some variation. As the figures submitted include no item for general expenses, \$1.04 has been added, making the total cost of mining and milling \$5.00 per ton, which figure is adequate. In other words, on an 80% recovery basis, mining 100 tons



a day and milling 120 tons per day 85% of the time, with tungsten at \$6.25 a unit, ore which runs 1%  $WO_3$  will pay expenses.

PROFITS: Without a tungsten market it is impossible to specify profits to be expected from operations. One method of attacking this problem is by tabulating the profits to be derived from mining and milling the 8111 tons of indicated ore, using various market prices from \$6.00 to \$16.00 per unit:

Market Price Per Unit	Gross Value of Indicated Ore	Net Value of Indicated Ore
\$ 6.00 .....	\$ 68,126 .....	\$ 27,571
8.00 .....	90,835 .....	50,280
10.00 .....	113,544 .....	72,989
12.00 .....	136,252 .....	95,697
14.00 .....	158,961 .....	118,406
16.00 .....	181,670 .....	141,115

It is impossible to give definite information relative to the probable market price for tungsten, and the best that can be done is to base a judgment of the future on the record of the past. The average price of tungsten from 1908 to 1917 inclusive, in the United States, in tons of 2000 lbs. of 60%  $WO_3$  contents, was \$1907 per ton. This represents a production of 24,221 tons having a value of \$46,201,-570. Leaving out the production and value of the 1916 output, there remains 16,752 tons having a value of \$12,114,110 or an average price of \$723 per ton for nine years. Including the 1916 output at the average sale price for nine years, there was a production of 24,221 tons with a value of \$17,514,-

197. The pre-war record in the United States from 1905 to 1914 inclusive, shows a production of 12,478 tons having a value of \$5,202,169 or an average price of \$416 per ton for ten years prior to the war, or \$6.93 per unit.

The property under discussion, with the costs indicated in the preceding paragraph, can produce a better grade of concentrates for \$277.77 per ton, or \$4.27 per unit on a 65%  $\text{WO}_3$  basis. In other words, the minimum profits to be expected are \$172.68 per ton of 65%  $\text{WO}_3$  concentrates, or \$2.66 per unit.

In view of the fact that the war requirements have stimulated the consumption of tungsten in industries which may be classed as peace industries, it hardly seems reasonable to expect that the average pre-war price above stated will hold in the future. On the other hand, war consumption stimulated the production in all countries in the world, with the result that a very large tonnage of material can be shipped to the United States probably at a cost not to exceed \$8.00 to \$10.00 a unit. Consequently, the future market price for tungsten without a protective tariff may be expected to be in the neighborhood of \$10.00 a unit.

Another viewpoint is the possibility and even the probability of so educating the manufacturers of tungsten products and the consumers of various types of steel to the beneficial qualities of tungsten that the peace requirements will more than absorb the domestic production, in which event a protective tariff would not be necessary and the price of tung-

sten should be considerably above the pre-war average.

#### THE PRESENT CONDITION OF THE MINE:

The present condition of the mine is clearly illustrated by Plate 5, which is an assay map. It will be seen that the ore zone to the northeast of the main stope above the first level is noncommercial under existing conditions, assuming a pre-war price for tungsten. Likewise, between the stopes southeast of the shaft on the first level, over an interval of 65 feet, the ground is noncommercial. On the second level, to the northeast, the face is in low grade ore, whereas the last 75 feet of the drift to the southwest is noncommercial. However, judging from the trend of the ore shoots, it seems likely that a continuation of this level will develop commercial ore within a few feet.

No. 3 level, which is just started, is in good ore, as is also the bottom of the shaft.

The Carlson vein, from which one sample was taken 35 feet below the collar of the shaft, while apparently a strong vein, does not seem to have a very high tungsten content. However, the explorations on this vein are so meager that they afford little or no data from which to draw any conclusions regarding the commercial possibilities of this vein.

**PROPOSED DEVELOPMENT PROGRAM:** A development program has been proposed and has been accepted by the management, which contemplates sinking the shaft an additional 360 feet, continuing level No. 2, driving levels 3, 4, 5 and 6, 380

feet to the southwest and 250 feet to the northeast, and connecting these levels by raises.

If this development continues in ore, the property should become an attractive commercial proposition during the life of the option, even assuming a pre-war market price for tungsten.

HOWLAND BANCROFT.

Denver, Colorado, February 15, 1919.



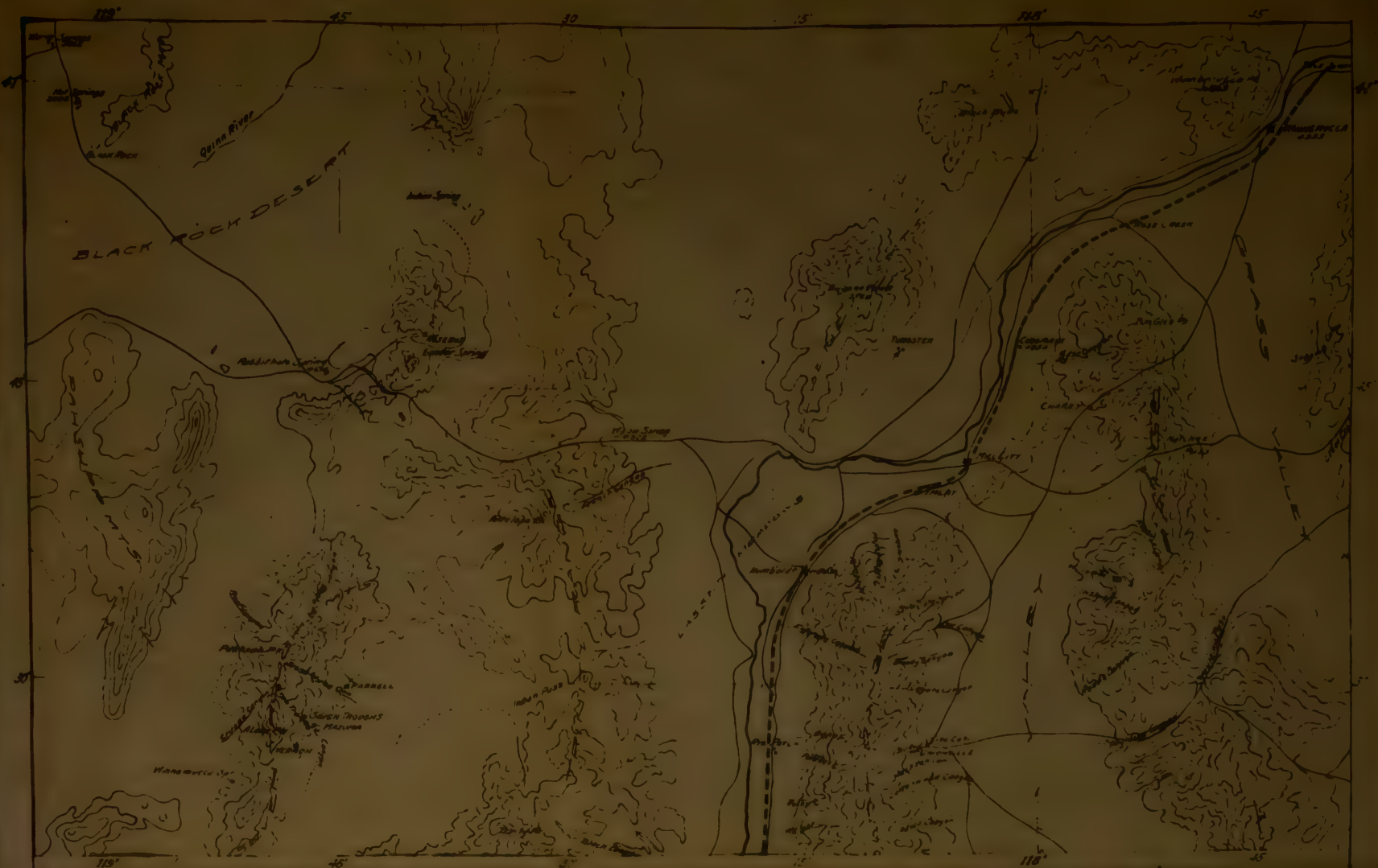


PLATE NO. I.

MAP OF A PORTION OF HUMBOLDT COUNTY, NEVADA

SHOWING THE LOCATION OF

THE NEVADA-HUMBOLDT TUNGSTEN MINE  
(MAP FURNISHED BY THE COMPANY)

TO ACCOMPANY THE REPORT OF HOWLAND BANCROFT FEBRUARY 15, 1919

SCALE OF MILES  
0 1 2 3 4 5



TOWN 35N										RANGE 35E									
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16				
17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32				
33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48				
49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64				
65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80				
81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96				
97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112				
113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128				
129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144				
145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160				
161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176				
177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192				
193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208				
209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224				
225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240				
241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256				
257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272				
273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288				
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1441	144																		



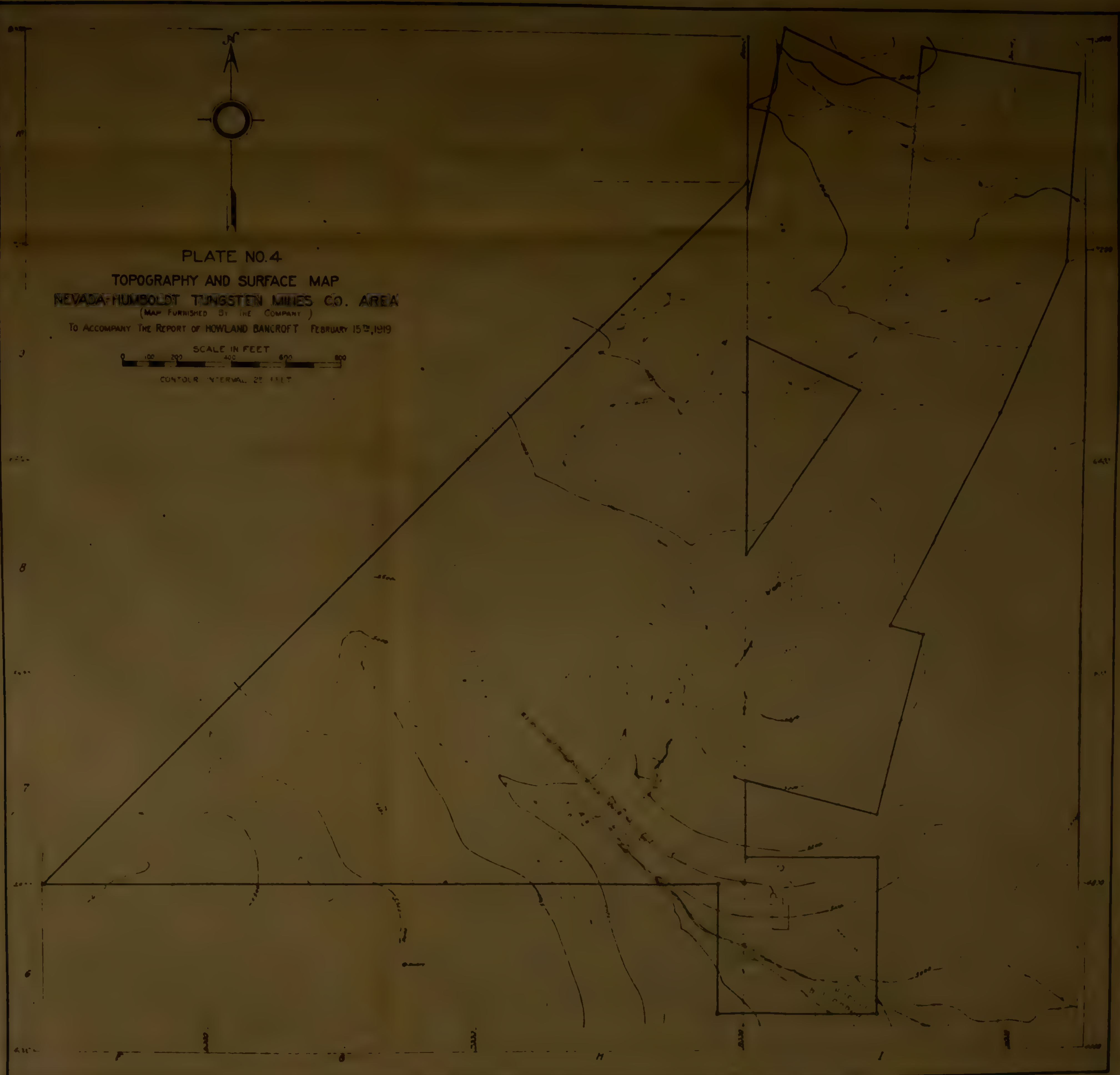


PLATE NO. 3  
GEOLOGICAL MAP

MILL CITY TUNGSTEN DISTRICT  
MILL CITY, NEVADA

(MADE POSSIBLE BY THE READING MACHINERY CO.)









SCALE IN FEET

LEGEND —

1.20 SAMPLE WIDTH

0.00%

SOLID LINES - WORKINGS  
CROSS-HATCHING - STOPPED AREAS

DASH LINES - PROPOSED DEVELOPMENTS

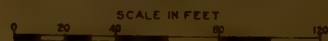
NE

SW



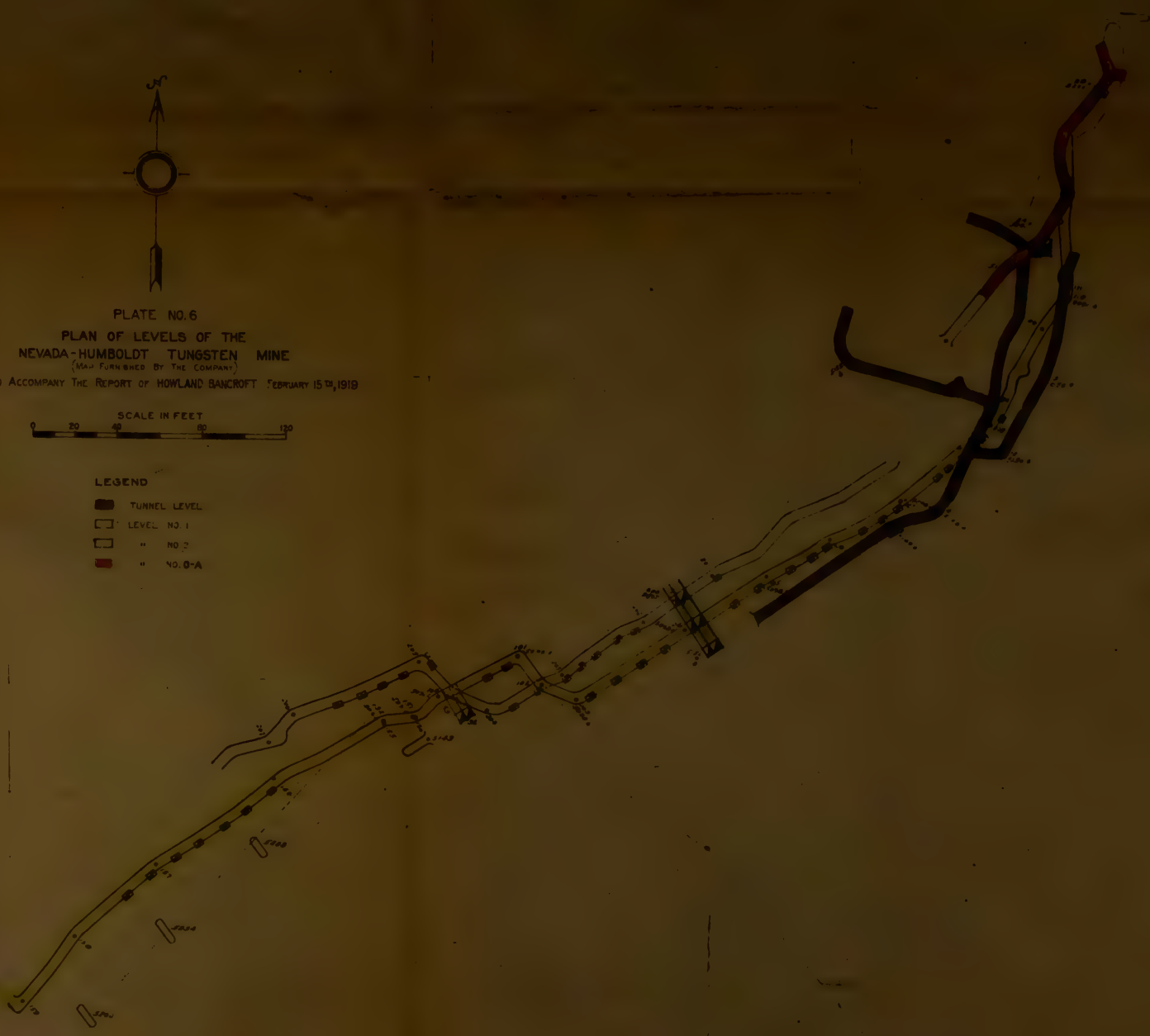
PLATE NO. 6  
PLAN OF LEVELS OF THE  
NEVADA-HUMBOLDT TUNGSTEN MINE  
(MAP FURNISHED BY THE COMPANY)

TO ACCOMPANY THE REPORT OF HOWLAND BANCROFT FEBRUARY 15<sup>TH</sup>, 1919



LEGEND

- TUNNEL LEVEL
- LEVEL NO. 1
- " NO. 2
- " NO. 3-A



APPENDIX "A."

TUNGSTEN PRODUCTS CO.

FLOW SHEET FOR 100 TON TUNGSTEN  
CONCENTRATOR.

(For the Nevada Humboldt Tungsten Mine.)

1. One Ton Ore Cars from Mine to No. 2.
2. 16'x16'x16' Ore Bin—Capacity 200 Tons.  
100 Tons will run out. To No. 3.
3. 1—24"x30" Double Rack and Pinion Ore Bin  
Gate. To No. 4.
4. 1—24"x60" Grizzly  $5/8$ "x $2\frac{1}{2}$ " taper bars, 1"  
space placed on 45° incline.  
Oversize to No. 5.  
Undersize to No. 6.
5. 20"x10" Type "B" Allis-Chalmers Blake  
Crusher—250 R. P. M. To No. 6.
6. 12" Belt Conveyor—26' centers. Belt speed  
280 ft. per min. Head Driven by Bevel  
Gears and Chain from Boot Pulley on No. 7.  
To No. 7.
7. Belt and Bucket Elevator, 46 ft. centers. Belt  
14" by 6 ply. Buckets 12"x $7\frac{1}{2}$ ", Style "A,"  
17" centers. Belt speed 300 ft. per min.  
Geared Head with T. & L. Pulleys. To  
No. 8.
8. 1—36"x6' Revolving Trommel, screen shell  
 $3/16$ " steel with  $7/16$ " dia. perforations.  
Speed 19 R. P. M. Slope 1" per foot. T. &  
L. Pulleys.  
Oversize to No. 9.  
Undersize to No. 10.

9. 36"x16" Allis-Chalmers Style "B" Crushing Roll set to  $3\frac{3}{8}$ ". To No. 6.
  10. 1—16' inside dia. by 20 ft. stave Oregon Pine Ore Bin. Staves of 4" and bottom of 6" material. 27— $5\frac{1}{8}$ " hoops. Capacity 200 tons. 100 tons will run out. Equipped with 18"x24" R. & P. Ore Bin Gate fastened to face of bin by hoops. To No. 11.
  11. 1—Right hand Belt Driven Hamill Ore Feeder with T. & L. Pulleys. To No. 12.
  12. Feed box for Elevator. To No. 13.
  13. Belt and Bucket Elevator, 55 ft. centers. 14" by 6 ply Belt. Buckets 12"x7 $\frac{1}{2}$ ", Style "A." 17" centers. Belt speed 300 ft. per min. Geared Head with T. & L. Pulleys. To No. 14.
  14. Distributing Feed Box to Duplex Trommel. To No. 15.
- Flow Sheet for 100 Ton Concentrator, Sheet No. 2.
15. 36"x5'-10" Standard Duplex Style "C" Revolving Trommel equipped with #23 Tyler Ton Cap Screen—3 m. m. opening. Slope  $\frac{3}{4}$ " per foot. T. & L. Pulleys, Bevel Gears, and Jaw Clutches.  
Oversize to No. 16.  
Undersize to No. 18.
  16. 24"x24"x24" Distributing Box to No. 7 or to No. 21.
  17. 30"x14" Allis-Chalmers Style "B" Crushing Rolls, 100 R. P. M. To No. 12.



18. 24" Duplex Callow Screen with 14 mesh Phosphor Bronze Ton Cap Belts. Belt speed 50 ft. per min.  
Oversize to No. 19.  
Undersize to No. 22.
19. 12"x12" Richards Single Compartment Pulsator Jig with screen for handling minus 3 m. m. plus 14 mesh product.  
Concentrate to No. 36.  
Tailing to No. 20.
20. 4 foot Callow Sloughing-off Cone.  
Spigot Discharge to No. 21 or No. 35.  
Overflow to No. 46.
21. 30"x14" Allis-Chalmers Style "B" Crushing Roll, 110 R. P. M. To No. 12.
22. 24" Duplex Callow Screen with 20 mesh Phosphor Bronze Ton Cap Belts. Belt Speed 50 ft. per min.  
Oversize to No. 25.  
Undersize to No. 23.
23. Simplex Callow Screen with 30 mesh Phosphor Bronze Ton Cap Belt. Belt speed 75 ft. per min.  
Oversize to No. 26.  
Undersize to No. 24.
24. Simplex Callow Screen with 48 mesh Phosphor Bronze Ton Cap Belt. Belt speed 75 ft. per min.  
Oversize to No. 27.  
Undersize to No. 28.
25. 12"x12"x48" Distributing Box to two No. 30.
26. 12"x12"x48" Distributing Box to two No. 30.

27. 12"x12"x48" Distributing Box to one No. 31.
28. 3—8' Callow Settling Cones.  
Gooseneck Discharge to No. 29.  
Overflow to No. 46.
29. 12"x12"x48" Distributing Box to three No. 31.  
Flow Sheet for 100 Ton Concentrator, Sheet No. 3.
30. 4—Deister Overstrom Sand Finishing Tables,  
equipped with Overstrom Head Motions.  
Concentrates to No. 36 and No. 37.  
Middling to No. 32.  
Tailing to No. 46.
31. 4—Deister Overstrom Sand Finishing Tables,  
equipped with Deister Head Motions.  
Concentrates to No. 37 and No. 38.  
Middling to No. 32.  
Tailings to No. 46.
32. Feed Box for Sand Pump. To No. 33.
33. Byron Jackson 2"—"1915" Centrifugal Belt  
Driven Sand Pump. To No. 34.
34. 4 ft. Callow Sloughing-off Cone.  
Spigot Discharge to No. 35 or No. 21.  
Overflow to No. 46.
35. 30"x14" Allis-Chalmers Style "B" Crushing  
Roll. 120 R. P. M. To No. 12.
36. Coarse Concentrate. To No. 39.
37. Fine Concentrate. To No. 39.
38. Slime Concentrate. To No. 39.
39. 6'—10"x16" Flat Top Concentrate Dryer—heavy  
ribbed cast-iron top plates—coal fired. To  
No. 40.
40. 1—6" Standard Gauge Screw Conveyor, 18 ft.  
long, driven by Bevel Gears and Sprocket

and Chain from Boot Sprocket of Elevator (41). To No. 41.

41. Sprocket and Chain Elevator, 12 ft. centers.  
Direct drive Head, driven by Belt from Magnetic Separator (43). To No. 42.

42. Hopper bottom Bin for Dried Concentrates.  
To No. 43.

43. 6 Pole Wetherill Magnetic Separator, with  
Magnets wound for 30,000–60,000 and 100,-  
000 Ampere turns. To Nos. 44 and 45.

44. Magnetic garnet and iron to waste.

45. Cleaned Scheelite Concentrate Box.  
To sacks and market.

46. 8' Callow Sloughing-off Cone.  
Spigot Discharge tailing to waste.  
Overflow to No. 47.

Flow Sheet for 100 Ton Concentrator, Sheet No. 4.

47. 14'x8' Dorr Thickener.  
Pulp Discharge—tailing to waste.  
Clear overflow to No. 48.

48. Tank for Suction of Pump. To No. 49.

49. 5"x7" Gould Triplex Plunger Pump. To No.  
53.

50. 100,000 Gal. Redwood Tank, 30' dia. by 20'  
Staves. Main water supply reservoir. To  
No. 51.

51. 3" Trident Crest Water Meter. To No. 52.

52. 7"x6" Gould Triplex Plunger Pump, belt  
driven. To No. 53.

53. 50,000 Gal. Redwood Tank, 24' dia. by 16' Stave.  
Mill Supply Reservoir.

54. 6' dia. by 6' Stave Redwood Tank with float valve. Water supply for Jig. To No. 19.
55. Nevada Valleys Power Co.'s Substation—Primary 60,000 Volts—Secondary 6600 Volts, 3 Phase, 60 Cycle.
56. Bowie Triple Horn Gap Lightning Arrester.
57. Three Pole Pacific-type 206 "G"—Style 2102, Pole Top Switch.
58. 3—50 K. W. 6600 to 440 Volt Transformers, "GE"—Type H. F. G.
59. 1—10 K. W. Westinghouse 6600 to 110 Volt Transformer.
60. Main Light Distributing System.
61. 1—400 Ampere Triple Pole Single Throw Knife Switch fused to 350 Amperes.
62. Crushing Plant Motor—50 HP. Type "CS" Westinghouse 440 Volt, 3 Phase, 60 Cycle, 690 R. P. M.  
Driving Nos. 5, 6, 7, 8 and 9.
63. Grinding Unit Motor—60 HP. Type "CS" Westinghouse 440 Volt, 3 Phase, 60 Cycle, 580 R. P. M.  
Driving Nos. 11, 17, 19, 21, 22, 23, 24 and 35.
64. Elevator and Trommel Motor—15 HP. Type "KT" General Electric, 440 Volt, 3 Phase, 60 Cycle, 1200 R. P. M.  
Driving Nos. 13, 15 and 18.
65. Concentrating Unit and Magnetic Separator Motor—30 HP. Type "KT" General Electric, 440 Volt, 3 Phase, 60 Cycle, 900 R. P. M.  
Driving Nos. 30, 31, 33, 40, 41, 43 and 68.



66. Thickener Motor—7½ HP. Type “KT” General Electric, 440 Volt, 3 Phase, 60 Cycle, 1800 R. P. M.

Driving Nos. 47 and 49.

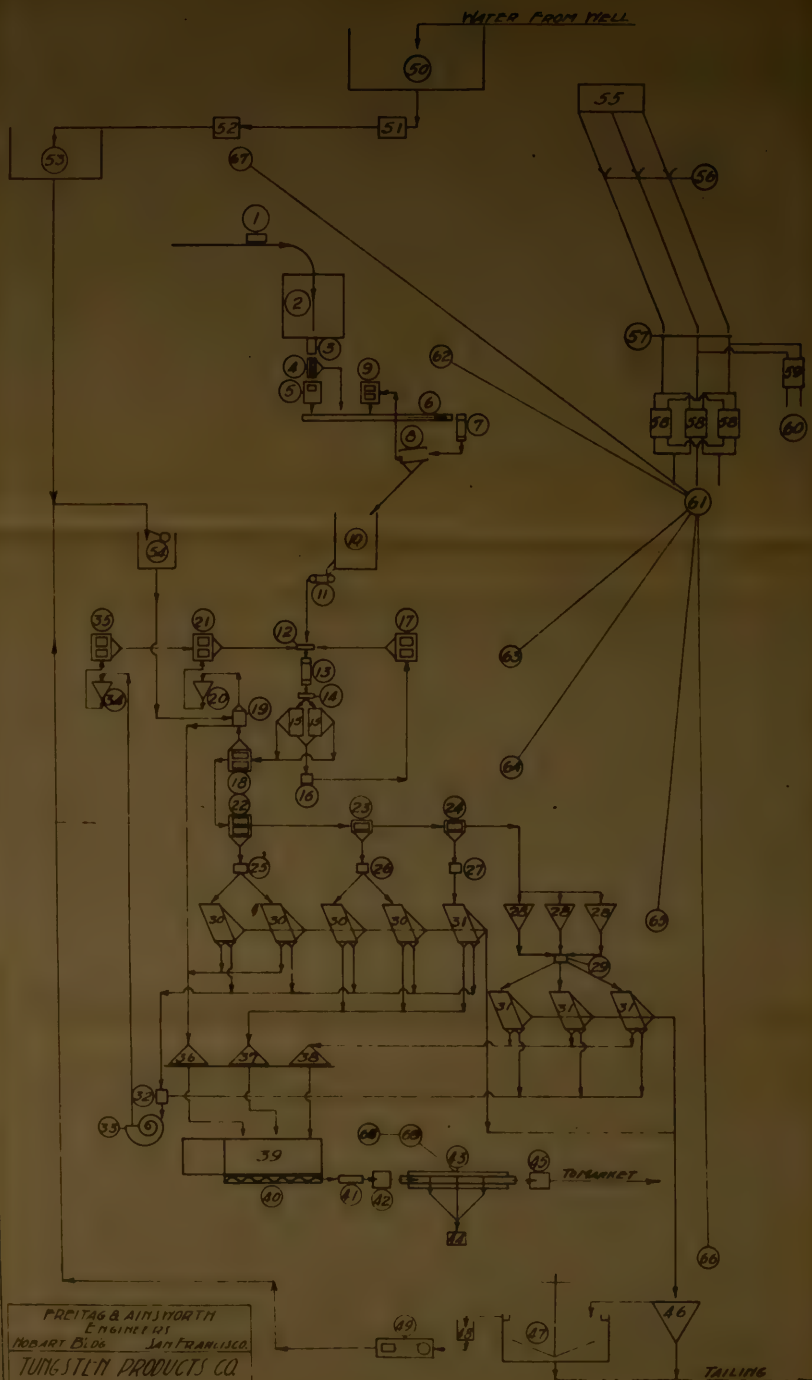
Flow Sheet for 100 Ton Concentrator, Sheet No. 5.

67. Pumping Plant Motor—15 HP. Type “CS” Westinghouse, 440 Volt, 3 Phase, 60 Cycle, 1700 R. P. M. Driving No. 52.

68. 6 K. W. 125 Volt D. C. General Electric Generator.

69. Magnetic Separator Switchboard.





PREITAG & AINSWORTH  
 ENGINEERS  
 1700 ART BLDG. SAN FRANCISCO  
 TUNGSTEN PRODUCTS CO.  
 FLOW SHEET  
 FOR 100 TON TUNGSTEN  
 CONCENTRATOR  
 DRAWING NO 400





## APPENDIX "B."

From a Statement Submitted by  
 NEVADA HUMBOLDT TUNGSTEN MINES  
 COMPANY  
 CONCENTRATES SOLD.

Lot No.	Tons	Pounds Concentrates	Per Cent WO <sub>3</sub>	Value
1	49,600	992	68.00	\$ 793.40
2	50,110	3220)		
3	163,265	10596)		
4	60,250	3812)	68.80	21,543.05
5	155,125	9065)		
6	126,287	5319)		
7	116,735	4902)	63.30	12,004.52
8	149,372	5924)		
9	63,032	3077	66.10	2,389.23
10	174,975	10880	67.20	8,590.84
11	169,942	9412	68.40	7,564.42
12	279,547	13872	68.90	11,204.52
13	466,547	21343	67.00	16,792.83
14 to 17	587,000	20306	60.10	13,904.55
18	134,300	5106	64.00	3,789.33
19	125,150	4833	63.30	3,627.10
20	348,700	14350	68.50	11,409.90
21	222,250	12801	69.00	10,260.04
22	260,500	14371	72.30	12,321.65
23	429,400	25002	72.00	21,130.47
24	289,650	11693	71.30	9,606.76

Lot No.	Tons	Pounds Concentrates	Per Cent WO <sub>3</sub>	Value
25	124,600	4604	69.10	3,694.
26	290,350	12005	68.70	9,559.
27	429,950	18847	70.60	15,593.
28	315,650	12345	69.90	10,139.
29	222,100	8551	68.20	6,851.
30	340,150	11528	71.50	9,707.
31	770,400	32145	67.00	24,731.
32	329,150	17961	58.60	12,103.
33	339,400	10150	51.80	6,008.
E1	49,554	2722	66.30	2,120.
E2	67,450	3421	65.10	2,616.
	77,700,491	345155		\$270,059.

# APPENDIX "C."

## From a Statement Submitted by NEVADA HUMBOLDT TUNGSTEN MINES COMPANY.

Shipping Concentrates on Hand.\*

January 13th, 1919.

Lot No.	Pounds Concentrates	Per Cent WO <sub>3</sub>	100% WO <sub>3</sub> Pounds
1	5492	61.70	3388
2	6068	66.50	4035
3	5283	65.80	3476
4	5324	68.10	3626
5	4106	68.70	2821
8	4658	64.20	2990
9	4710	63.60	2995
10	4644	62.30	2893
11	4674	62.20	2907
12	4824	59.50	2870
13	4032	68.60	2766
15	5636	63.50	3579
16	2907	71.60	2081
17	4835	64.10	3099
18	3911	63.60	2496
19	2816	72.70	2047
20	4187	61.70	2583
<hr/>			
	78107	64.85	50652

Total tonnage which produced shipping and sulphite concentrates—3456 tons.

Average saving—1.21% WO<sub>3</sub>.

\*NOTE: These concentrates have since been shipped.  
H. B.

## APPENDIX "D."

From a Statement Submitted by  
 NEVADA HUMBOLDT TUNGSTEN MINES  
 COMPANY.

Sulphite Concentrates on Hand.\*

January 13th, 1919.

Lot No.	Pounds	Per Cent	100% WO <sub>3</sub>
	Concentrates	WO <sub>3</sub>	Pounds
1 CS	2370	41.20	976
2 CS	2151	41.20	886
3 CS	2160	42.80	924
4 CS	2153	38.60	831
5 CS	2175	37.60	818
6 CS	2159	38.10	823
7 CS	2167	38.90	843
8 CS	2115	40.20	888
9 CS	2313	39.60	916
10 CS	2059	37.80	778
11 CS	2102	37.20	782
12 CS	2054	39.90	819
13 CS	1926	40.80	924
34 to 38	28280	55.30	15639
6	5006	57.00	2853
7	4003	56.80	2274
14	1820	51.20	932
	<hr/> 67013		<hr/> 32906

\*NOTE: These concentrates have since been  
 cleaned and shipped. H. B.





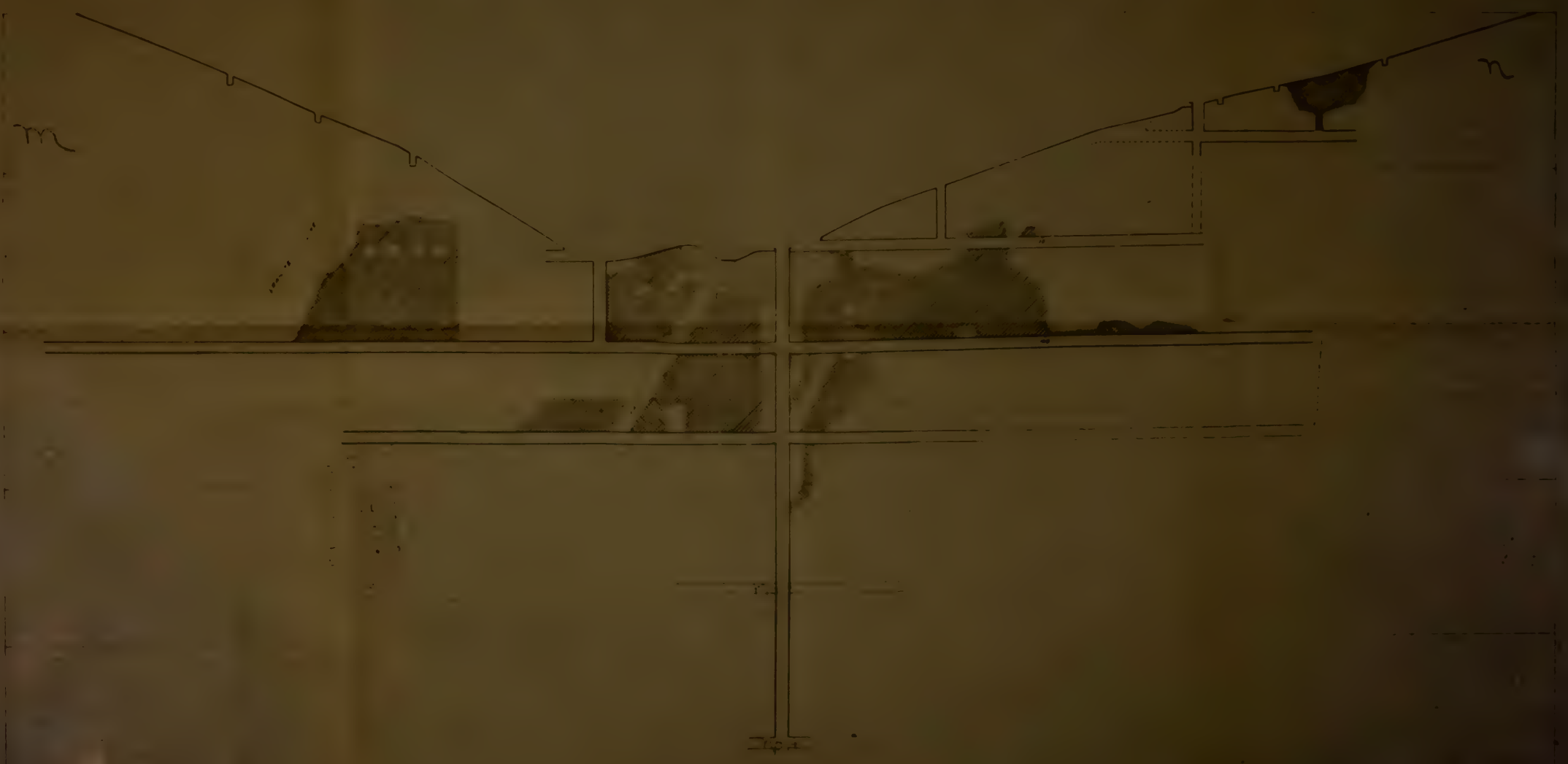
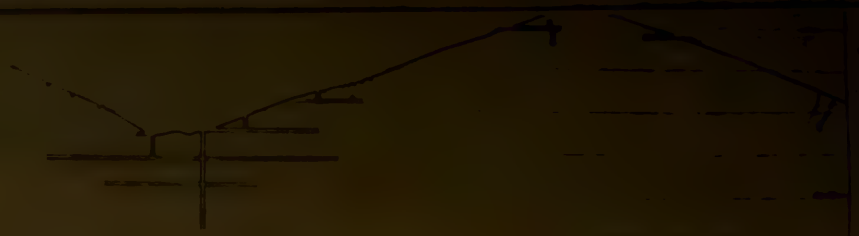




[Endorsed]: No. B-7. U. S. District Court, District of Nevada. David Taylor, vs. Nev. Hum. Tungsten Co. et al. Bancroft's Map re Supplementary Report. Plffs. Ex. No. 20. Filed September 16, 1920. T. J. Edwards, Clerk.

No. 3902. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 28, 1922. F. D. Monekton, Clerk.





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**In the United States  
Circuit Court of Appeals,  
FOR THE NINTH CIRCUIT**

DAVID TAYLOR,

Appellant,

against

NEVADA HUMBOLDT TUNGSTEN  
MINES COMPANY, a corporation,  
TUNGSTEN PRODUCTS COMPANY,  
a corporation, MILL CITY DEVELOP-  
MENT COMPANY, a corporation, W.  
J. LORING, C. W. POOLE, R. NEN-  
ZEL, H. J. MURRISH, L. A. FRIED-  
MAN, C. H. JONES, G. K. HINCH, J.  
T. GOODIN, V. A. TWIGG, J. C.  
HUNTINGTON, and LENA J. FRIED-  
MAN, individually,

Appellees.

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**Appellant's Opening Brief**

GEORGE B. THATCHER,  
WILLIAM WOODBURN,  
JOHN G. JACKSON,

Attorneys for Appellant.

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# In the United States Circuit Court of Appeals,

FOR THE NINTH CIRCUIT

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MAN, C. H. JONES, G. K. HINCH, J.  
T. GOODIN, V. A. TWIGG, J. C.  
HUNTINGTON, and LENA J. FRIED-  
MAN, individually,

Appellees.

APPELLANT'S  
OPENING  
BRIEF

## STATEMENT OF THE CASE

This is an appeal by the plaintiff (p. 1466) from a judgment and decree of the District Court of the United States in and for the District of Nevada, filed September 13, 1921 (p. 1437) dismissing the complaint of the plaintiff. This action is in equity and was brought by the plaintiff to compel the specific performance of certain contracts and the delivery of stock in the defendant companies, set forth and referred to in the bill of complaint and for such other and further relief as might be just and equitable (pp. 1145-

1147). It was commenced on the 17th day of April, 1920, and came on for trial on September 14, 1920, before the Hon. E. S. Farrington. The trial, at which considerable evidence was introduced and testimony taken, lasted over a week, and after the conclusion thereof the Trial Court held the case under advisement, until August 10th, 1921, when it handed down its opinion and rendered a decision in favor of the defendant (pp. 1407-1436), which is the subject of this appeal. Thereafter, on September 30th, 1921, the plaintiff filed a petition for rehearing (p. 1440) which petition was on November 8, 1921, by order of said Court, denied.

The complaint, (p. 1125) after alleging the usual jurisdictional grounds, alleges in substance that on January 16, 1919, the plaintiff Taylor and the two defendants, Nevada Humboldt Tungsten Mines Company, hereinafter referred to as the "Tungsten Company," and the Tungsten Products Company, hereinafter referred to as the "Products Company," entered into a contract, a copy of which is attached to the complaint and marked "Exhibit A" (p. 1148) under and by the terms of which Taylor agreed to advance \$100,000, and the two companies agreed to deliver to him at specified dates 170 tons of scheelite concentrates of certain guaranteed qualities; that on the same day, in consideration of the plaintiff entering into the agreement with the Tungsten Company and Products Company, and for other considerations, the defendants Friedman, Poole, Nenzel, Jones, Murrish, Hinch, Huntington, Goodin, Twigg and Lena Friedman also entered into an agreement with the plaintiff Taylor, a copy of which is attached to the bill of complaint and marked "Exhibit B" (p. 1153) under and by the terms of which these individual defendants granted to the plaintiff Taylor an option on all their interest in the three defendant corporations for a

total purchase price of \$498,000, agreeing that all debts and obligations of the said companies should be satisfied out of the purchase money and that the option should be good up to and including the 16th day of July, 1919. That shortly after the making and execution of the contract of January 16th (Exhibit B), one Howland Bancroft, a mining engineer, at the special instance and request of the plaintiff made an examination of the mines, mining property and mining rights of the Tungsten Company, which said report was communicated to the plaintiff; that said report showed the amount of development which then existed upon said mining property and showed that about 9,000 tons of scheelite ore of an average of 1.75 per cent tungstic acid had been developed, placed in sight, blocked out and made ready for mining in said mining property; that the fact and truth concerning said mines and mining claims of the Nevada Humboldt Tungsten Mines Company and the development work which had been performed and the new development work in progress on and within said mines, mining claims and mining rights of said Nevada Humboldt Tungsten Mines Company, and the amount of ore developed, placed in sight, blocked out and made ready for mining and extraction and reduction in said mining property of the Nevada Humboldt Tungsten Mines Company were, at all times mentioned in the complaint, peculiarly within the knowledge and information of the individual defendants (except Loring) and particularly of the defendants Poole, Nenzel, Murrish and L. A. Friedman. That on or about the month of March, 1919, plaintiff informed the individual defendants (except Loring) that it was probable that the plaintiff would not be able to exercise his option to purchase said interests of the defendants (except Loring) in said corporations under said contract of January 16th; that thereupon the defendants Poole, Murrish, Nenzel and Friedman, acting for themselves and the other individual



defendants, with the intent to deceive plaintiff and for the purpose of inducing plaintiff to execute and undertake a supplemental contract, referred to in said bill of complaint, falsely and fraudulently by means of telegrams and letters informed plaintiff that further and new development work had been carried on within said mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, which had developed and placed in sight, blocked out and made ready for mining, large quantities of scheelite ore of commercial value and capable of being concentrated and the concentrates so returned being of great value; that thereafter and on or about the 2nd day of April, 1919, the defendants Poole, Murrish and Nenzel came to Denver, Colorado, where the plaintiff resided, for the purpose of inducing the plaintiff to make a supplemental contract for the disposition of their respective interests, or part thereof, and the plaintiff then and there believing and relying on the said representations of the defendants Poole, Murrish and Nenzel, who then and there represented themselves and were acting as the agents and attorneys—in fact for the other defendants (except Loring), entered into a supplemental contract whereby plaintiff undertook to raise by borrowing sufficient moneys to pay the debts and obligations of the Nevada Humboldt Tungsten Mines Company, Tungsten Products Company, and their respective shares in the Mill City Development Company, for which said services the plaintiff was to receive 62 per cent of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the issued capital stock of the Tungsten Products Company, and 62 per cent of one-half of the issued capital stock of the Mill City Development Company, a copy of which contract is attached to and made a part of the bill of complaint, marked "Exhibit C", and is as follows:



"THIS AGREEMENT this day entered into between David Taylor, of Denver, Colorado, first party, and L. A. Friedman, Lena J. Friedman, C. W. Poole, John G. Huntington, R. Nenzel, C. H. Jones, G. K. Hinch, J. T. Goodin, V. A. Twigg and H. J. Murrish, second party,

WITNESSETH:

WHEREAS the parties hereto, on or about January 16, 1919, entered into an agreement in respect to the purchase and sale of certain stock of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, reference to which contract is hereby made and which said contract is made a part hereof, and

WHEREAS the Nevada Humboldt Tungsten Mines Company on the same date, entered into an agreement with the said David Taylor for the advance of certain moneys on scheelite concentrates, as more particularly appears in said agreement to which reference is hereby made, and

WHEREAS this agreement is supplemental to both of said agreements and all of said agreements are now to be read together and considered as one in so far as applicable, due reference being had to the changes herein made, and

WHEREAS, owing to the demoralization of the Tungsten market it seems impossible for the said David Taylor to market scheelite concentrates or to interest parties in the purchase of tungsten properties, and for that reason it is deemed probable that said Taylor will not be able to exercise his option contained in the above mentioned agreement, and

WHEREAS, by reason of the facts herein named it may become impossible for the Nevada Humboldt Tungsten Mines Company and the other Companies above referred to to secure sufficient funds for the liquidation of their indebtedness, and

WHEREAS it is the purpose of this agreement to so modify the said option as to enable the said Nevada Humboldt Tungsten Mines Company and its allied companies to pay its debts, continue its operation and secure itself from the jeopardy of possible loss through suits by its creditors,

NOW, THEREFORE, in consideration of the premises and of the sum of One Dollar (\$1.00) each to the other in hand paid, it is mutually understood, covenanted and agreed as follows, to-wit:

1. The first party undertakes to secure by borrowing for the Nevada Humboldt Tungsten Mines Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of Two Hundred and Twenty Thousand (\$220,000.00) Dollars, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing such sum of money, 62 per cent of the issued capital stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the issued

capital stock of the Tungsten Products Company, 62 per cent of one-half of the issued capital stock of the Mill City Development Company; that a deposit of the amount necessary to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided.

# IT IS MUTUALLY UNDERSTOOD AND AGREED:

A. That the said sum raised by the first party herein is a loan to the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company and the Mill City Development Company, and not a payment for stock; and that same is to be evidenced by the issuance of redeemable preferred stock with a maximum of 7 per cent cumulative interest, provided that said stock shall be sold for less than 95 per cent of par net to the company.

B. That the second parties hereto will cause a new company to be organized to which the assets of the companies herein described shall be conveyed or shall amend the present articles of the Nevada Humboldt Tungsten Mines Company and its allied companies hereinbefore mentioned, in order to effectuate this agreement as shall be required by the first party.

C. It is agreed that in such incorporation, or in the amendment above provided, due and proper provision shall be made (1) that 80 per cent of the Board of Directors must approve the sale of any of the property of the company or the purchaser of additional property



(2) that the cumulative voting power of the common stock shall not be taken away; (3) that the net receipts from any relief received from the United States Government under the War Minerals Relief Act of the corporations herein mentioned or any of them, shall inure to the benefit of such new corporation as may be formed; (4) that profits shall be distributed whenever same have accumulated to the amount of Fifty Thousand (\$50,000.00) Dollars or over, after the debts are paid, unless contrary provided by a vote of 80 per cent of the Directors; (5) and further, that the preferred stock shall be redeemed out of the profits on June 30 or December 31, of every year, whenever the sum of Fifty Thousand (\$50,000.00) Dollars is accumulated, and before any dividends are paid on the common stock.

D. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED that the performance of this agreement shall release the first party from any and all obligation to pay the purchase price of said stock mentioned in the option hereinbefore referred to.

E. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that this agreement shall expire by limitation on June 16, 1919, and shall carry with it the option hereinbefore mentioned as executed on January 16, 1919, which shall also expire by limitation on said date, and they shall be of no further force or effect if the first party shall not have negotiated the loan and secured the money provided in Paragraph 1 hereof.

Time is the essence of this agreement, and each and every clause hereof shall bind and benefit the heirs and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have



hereunto set their hands and seals this 2nd day of April, 1919.

(Signed)

DAVID TAYLOR,  
First Party.

C. W. POOLE  
R. NENZEL,  
H. J. MURRISH,

(L. A. FRIEDMAN,  
(LENA J. FRIEDMAN,  
(C. H. JONES,  
(G. K. HINCH,  
(J. T. GOODIN,

By R. NENZEL,

Attorney in Fact.

(V. A. TWIGG,  
(J. G. HUNTINGTON,

Second Parties.

C. W. POOLE,  
Attorney in Fact."

That defendants Poole, Murrish and Nenzel, acting for themselves and as the agents of and the attorneys-in-fact for the other individual defendants (except Loring) for the purpose of inducing the plaintiff to enter in and upon said supplemental contract of date of April 2, 1919, then and there falsely and fraudulently and with the intent to deceive the plaintiff, represented to the plaintiff that since the examination of the mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, and the report thereof made by Howland Bancroft, mining engineer, aforesaid, to the plaintiff, great and additional ore bodies of equal grade and quality had been developed; that a large quantity of new development work had been done and performed upon said mines and that there was then on said 2nd day of April, blocked out, in sight and ready for mining and reduction into concentrates, over

60,000 tons of scheelite ore which would carry an average of 1.75 per cent tungstic acid; that each and all of the representations aforesaid were false and untrue and were known by said defendants at the time they were made to be false and untrue and were made for the purpose of deceiving the plaintiff and for the purpose of causing him to undertake and carry out the terms of said supplemental contract of April 2nd; that in truth and in fact at said time there was opened up, blocked out and in sight in said mine not to exceed 19,000 tons of scheelite ore of an average value not to exceed 1.75 per cent tungstic acid; that plaintiff, then and at all times thereafter, relying upon and believing the said false and fraudulent representations of said defendants so made as aforesaid, executed said contract of said date of April 2, 1919, and immediately thereafter gave practically his entire time and attention to carrying out the terms of said contract by which he was to raise, for the benefit of such defendant corporations, sufficient moneys for the payment of their debts and outstanding obligations, for the purpose of consummating the same and carrying out the terms thereof, paid out and expended in various ways a large amount of moneys in excess of \$8,000. That plaintiff, relying upon said representations aforesaid, also gave his time and efforts to said enterprise and the consummation of said contract during all of the time from April 2nd to June 1st, 1919; that as a result of the expenditures aforesaid, time and efforts of the plaintiff, plaintiff succeeded and had pledged himself and others associated with him an amount sufficient to meet any and all obligations of his under the terms of said contract and sufficient to entitle him to receive the 62 per cent of the capital stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company, and 62 per cent of one-half of the stock of the Mill City Development Company, under the terms of said contract of April 2, 1919; that said sum was pledged by the

plaintiff and others associated with him in the amount aforesaid, relying upon the representations of the individual defendants (except Loring) and the plaintiff communicated said representations to his associates, who pledged a large and substantial portion of said money to the plaintiff for the purpose of carrying out any and all his obligations under the terms of said contract; that plaintiff on or about between the 18th and 25th days of May informed the individual defendants (except Loring) that he was ready, able and willing to perform his obligations under the terms of said contract; that on or about the 1st day of June, 1919, plaintiff discovered the falsity of the representations of said defendants and upon receipt of such information communicated the same to his associates who had agreed to furnish a large portion of the money necessary for the completion of the obligations of the plaintiff under the terms of said contract of April 2nd; that thereupon his associates withdrew from said undertaking and refused to go into the same and refused to advance any money whatsoever for it; that by the terms of said contract of April 2nd, 1919, the individual defendants (except Loring) covenanted and agreed that such moneys as should be received by the plaintiff should be a loan to the defendants Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the Mill City Development Company, and not in payment for stock, and that said loan was to be evidenced by the issuance of redeemable preferred stock, and that the defendants would cause a new company to be organized to which the assets of said defendant corporation would be conveyed or to so amend the Articles of the Nevada Humboldt Tungsten Mines Company as to effectuate this agreement as should be required by the plaintiff; that plaintiff before the expiration of said contract requested and demanded of said defendants (except Loring) that they so organize said new corporation or amend the Articles of Incorporation of said company to



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comply with the provisions of the contract of April 2nd; that the defendants wholly neglected and refused to perform said contract of April 2nd, 1919, and refused and neglected to deliver to the plaintiff 62 per cent of the stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company, and 62 per cent of one-half of the stock of the Mill City Development Company under the terms of said contract of April 2nd, 1919; that the plaintiff performed each and every covenant and obligation and agreement in said contract by him to be kept and performed; that said stock of said defendant corporation at and before the commencement of this suit had no market value and that the value thereof at the time the contract was made and entered into between the plaintiff and said defendants depended upon the operation and development of the property owned by the Nevada Humboldt Tungsten Mines Company, and particularly the mines and mining property thereof; that the value of said stock cannot be exactly shown or definitely ascertained and that the continued development of said property, mines and mining claims would increase the value of said property and the value of said stock; that there is no method of ascertaining the amount or damage the plaintiff has or will sustain by reason of the failure on the part of said defendants to transfer and deliver to said plaintiff the amount of stock to which he is entitled under said contract; that the value of said stock is wholly conjecture, speculative and uncertain and dependent upon many and varied conditions wholly beyond the control of either the plaintiff or defendants; that on or about the 16th day of August, 1918, the defendant Nevada Humboldt Tungsten Mines Company and its subsidiary, the defendant, Tungsten Products Company, entered into a contract with the defendant W. J. Loring for the sale of all its mines, mining property and mining claims and particularly of its



assets of every kind and character; that said contract was made and executed pursuant to resolution of the Board of Directors of said corporations and that thereafter said defendant corporations called meetings of their respective stockholders for the purpose of ratifying and confirming said contract with said Loring; that said meetings of stockholders were held without adequate or proper notice thereof to the stockholders of said corporations, and particularly to the plaintiff, a stockholder of the Nevada Humboldt Tungsten Mines Company; that said meetings were held without giving notice, as required by the laws of the State of Nevada; that the plaintiff objected to said sale and to said contract and promptly demanded the rescission and cancellation thereof; that thereafter the officers, directors and stockholders of said corporation refused and neglected to set aside or cancel said pretended conveyances and said contracts or to commence any action in any Court for the rescission or cancellation thereof; that thereupon this plaintiff commenced an action in said District Court as a stockholder to set aside, cancel and rescind said contracts and said conveyances so unlawfully made by said corporations to said defendant Loring; that said Loring took said deeds and said contract for said property from said defendant corporations with full notice of the rights and equities of the plaintiff, and said Loring was duly and regularly informed thereof by the plaintiff before he had in any wise performed any part or portion of said contracts; that said suit for the cancellation and rescission of said contract and said conveyances to said Loring by the defendant corporations is now pending in said District Court; that the Nevada Humboldt Tungsten Mines Company had called another meeting of stockholders to be held on April 19th to further authorize and ratify the sale of the property of the defendant corporations to the defendant Loring and authorize instrument of conveyance to said Loring by said de-

fendant corporations of all of the property and assets of Nevada Humboldt Tungsten Mines Company and the Tungsten Products Company; that the plaintiff was informed and believed that the defendants Nenzel, Poole, Murrish, Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman, as stockholders of said Nevada Humboldt Tungsten Mines Company and said Tungsten Products Company, and the Mill City Development Company would at such meeting vote all their shares, which would include the 62 per cent of the capital stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the capital stock of the Tungsten Products Company, and 62 per cent of one-half of the capital stock of the Mill City Development Company, all of which is rightfully the property of the plaintiff, in favor of authorizing the sale to Loring of all of the corporate property and assets of said defendant corporations, all of which would result in great irreparable damage and injury to the plaintiff, unless restrained by order of the Court; that the effect of said sale of said property of said corporations would be practically to dissolve the same and that unless restrained by said Court the proceeds of said sales would be distributed to the stockholders, all of which would be to the great and irreparable damage of the plaintiff and would greatly depreciate the value of the stock to which plaintiff is entitled under the terms of said contract of April 2nd, 1919; that on or about the 1st day of June, 1919, the plaintiff duly offered to perform each and every covenant and obligation on his part to be performed under and by virtue of said contracts of January 16th and April 2nd aforesaid, provided that the said defendants would grant and allow to the plaintiff an abatement of certain terms thereof for and on account of the false and fraudulent representations alleged.

Plaintiff in and by its said complaint prayed for a judgment and decree decreeing that the defendants Poole, Nen-



zel, Murrish, L. A. Friedman, Jones, Hinch, Goodin, Twigg, Huntington and Lena J. Friedman, be compelled to specifically perform their said contracts and deliver to the plaintiff 62 per cent of the stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company, and 62 per cent of one-half of the stock of the Mill City Development Company; that plaintiff have an abatement of the provisions of said contract, or of the whole thereof, for and on account of the false and fraudulent representations of the defendant, as should be determined by the Court to be just and equitable; that the defendants Poole, Nenzel, Murrish, L. A. Friedman, Jones, Hinch, Goodin, Huntington and Lena J. Friedman as stockholders be enjoined **pendente lite** from voting 62 per cent of the stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company, and 62 per cent of one-half of the stock of the Mill City Development Company, at the special meeting of the stockholders, to be held at Lovelock, Nevada, on the 19th day of April, 1920, or of any continuance of said meeting or of any other meeting of the stockholders until further order of said Court, in favor of furthering or at all ratifying, confirming or approving or in any wise authorizing the sale and conveyance of the assets of the mines and mining claims of the defendant, Nevada Humboldt Tungsten Mines Company, to Loring, or to any person or persons whomsoever, and enjoining **pendente lite** said defendants, their agents or attorneys from in any wise authorizing the execution or delivery of any bills of sale, deeds or other instruments of conveyance, which would convey or further assure to said Loring title of, in or to any of the property, mines or mining claims or assets of the Nevada Humboldt Tungsten Mines Company, and for an order enjoining the defendant corporations and their officers, agents and attorneys, or their directors or any other persons acting under or through them from per-

mitting to be voted at said special meeting of stockholders or at any continuation thereof or at any other meeting of stockholders until the further order of this Court, said 62 per cent of the stock of the Nevada Humboldt Tungsten Mines Company, 62 per cent of the stock of the Tungsten Products Company, and 62 per cent of one-half of the stock of the Mill City Development Company, in favor of ratifying or confirming any instrument or contract for the sale of the property and assets of the defendant corporation, Nevada Humboldt Tungsten Mines Company, or from executing any bills of sale or other instrument of sale of the said Nevada Humboldt Tungsten Mines Company to said Loring or any person or persons whomsoever, until further order of said Court; that said injunctions upon final hearing be made perpetual; that plaintiff have judgment for his costs and that plaintiff have such other and further relief as might be just and equitable in the premises.

The Trial Court in its opinion (p. 1435) decided that the Plaintiff Taylor was neither misled nor deceived by the defendants and found that the evidence was not sufficient to show that the alleged false representation as to tonnage in the mine were made; and that even if there were such representations the plaintiff Taylor was not thereby induced to enter into the contract of April 2nd or to attempt the performance of its conditions; that the contract of April 2nd, as well as the option of January 16, expired by limitation June 16, 1919, and that prior to that date no deposit in the Wells Fargo Nevada National Bank of San Francisco of an amount sufficient to liquidate the indebtedness of the defendant corporations was made by or for Taylor; that he never performed what he agreed in the contract to do; that he never made an unconditional offer of performance and never prior to June 16th was he actually ready, able and willing to perform unconditionally. The Court further states in its opinion (p. 1436) that "it is un-



necessary in view of the conclusions reached on the merits of the case to determine other issues raised by the pleadings," and directed that a decree be entered in favor of defendants in accordance with the opinion. In the decree entered pursuant thereto and from which this appeal is prosecuted, it was ordered, adjudged and decreed that the plaintiff take nothing by his bill and that the same be and it thereby was dismissed with costs. The plaintiff in its petition for rehearing stated as ground therefor that the evidence was insufficient to justify said decision and the decree entered pursuant thereto and that said decision and decree entered pursuant thereto were against law, and, as a further ground, that errors at law occurred during the trial, excepted to by the plaintiff.

The plaintiff filed the following assignment of errors, upon which he relies in the prosecution of this appeal from the said decree entered on the 13th day of September, 1921 (p. 1469-1472):

## ASSIGNMENTS OF ERROR

### I.

That the Court erred in making and entering its final decree in favor of the defendants and against the plaintiff and that said decree is not supported by and is contrary to the evidence, and is against law.

### II.

That the Court erred in failing and refusing to enter a decree in favor of the plaintiff, awarding to the plaintiff sixty-two per cent (62 per cent) of the stock of the Nevada Humboldt Tungsten Mines Company, sixty-two per cent (62 per cent) of the stock of the Tungsten Products Company and sixty-two per cent (62 per cent) of one-half of the stock of the Mill City Development Company, and the finding of the Court and the decree entered pursuant

thereto against the plaintiff and in favor of the defendants is contrary to the evidence and not supported thereby, and is against law.

### III.

That the Court erred in finding that the plaintiff had failed to establish by a fair preponderance of the evidence, that the defendants, Poole, Murrish, Nenzel and Friedman, for the purpose of inducing plaintiff to undertake the contract, had falsely and fraudulently, by means of telegrams and letters, informed plaintiff that further and new development had been carried on within the mines and mining claims of the Nevada Humboldt Tungsten Mines Company which had developed and placed in sight, blocked out and made ready for mining, large quantities of scheelite ore of commercial value and capable of being concentrated, the concentrates so returned being of great value.

### IV.

That the Court erred in finding that the representations made by the defendants through Nenzel, by telegrams of date of February 14, 1919 (Exhibit 2), of February 24, 1919 (Exhibit 3), telegram of Nenzel of March 12, 1919 (Exhibit 8), letter of Nenzel of March 21, 1919 (Exhibit 9), telegram of Friedman of March 25, 1919 (Exhibit 10), letter of Nenzel of March 27, 1919 (Exhibit 13), were true and that by said telegrams or letters or any of the letters or telegrams made prior to the execution of the contract of April 2, 1919 (Exhibit 16) the plaintiff was not misled and said finding was contrary to the evidence and is not supported by the evidence, and is against law.

### V.

That the Court erred in finding that plaintiff had failed

to establish by a fair preponderance of the evidence that Poole, Murrish or Nenzel, had, at Denver, falsely and fraudulently represented to plaintiff that since the examination of the mining claims of the Nevada Humboldt Tungsten Mines Company by Bancroft in January, additional ore had been blocked out and there had been made ready for mining over sixty thousand (60,000) tons of scheelite ore carrying an average of one hundred and seventy-five per cent (175 per cent) tungstic acid and in finding that plaintiff was not misled or deceived by the defendants, and the same is contrary to the evidence and is not supported by the evidence and is against law.

## VI.

That the Court erred in making the following finding: "I find the evidence is not sufficient to show that the alleged false representations as to tonnage in the mine were made; and even if there were such representations, Taylor was not thereby induced to enter into the contract of April 2nd or to attempt to perform its conditions." Said finding is contrary to the evidence and is not supported by the evidence, and is against law.

## VII.

That the Court erred in its opinion and decision filed October 10, 1921 and the findings therein and in the whole thereof and in the conclusions therefrom, and that said opinion upon which the decree was entered is contrary to the evidence and is not supported by the evidence, and is against law.

## VIII.

That the Court erred in overruling and denying plaintiff's petition for rehearing.



That the Court erred in finding that plaintiff had not acted and relied upon the representations made by the defendants and said finding is contrary to the evidence and is not supported by the evidence, and is against law.

### ARGUMENT AND BRIEF

As pointed out by the Trial Court, in its opinion, (p. 1423) the plaintiff's "whole case rests on the truth of his allegations that false and fraudulent statements were made to him, and that he relied on them to his prejudice." These question of fact the plaintiff in order to establish his case was required to prove by a fair preponderance of the evidence. The judgment of the Trial Court is that he has failed to do so (p. 1423) and the plaintiff now comes before this Court, taking issue with the Trial Court, on these questions of fact, and contending that these facts were established and proven upon the trial by a fair preponderance of the evidence. There are two charges of misrepresentation alleged in the complaint (pp. 1131-1133) which the plaintiff alleges induced him to execute and undertake the performance of the contract of April 2nd, and which form the basis of this action. These are fairly stated and referred to in the opinion of the Trial Court as follows:

(p. 1423)

"The first charge of misrepresentation is as follows: Poole, Murrish, Nenzel and Friedman, for the purpose of inducing plaintiff to undertake the contract of April 2nd,

'Falsely and fraudulently and by means of telegrams and letters informed plaintiff that further and new development work had been carried on within said mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, which had developed and placed in sight,



blocked out and made ready for mining, large quantities of scheelite ore of commercial value, and capable of being concentrated, and the concentrates so returned being of great value.' ”

\* \* \* \* \*

(p. 1428)

“The second charge of misrepresentation is that Poole, Murrish and Nenzel, at Denver, falsely and fraudulently represented to Taylor that since the examination of the mining claim by Bancroft in January, additional ore bodies had been developed, and that there was then blocked out, in sight and ready for mining over 60,000 tons of scheelite ore which would carry an average of 1.75 per cent tungstic acid; that such representations were false, made for the purpose of inducing him to undertake and carry out the terms of the agreement of April 2nd, and were relied on by him to his prejudice.”

## FIRST CHARGE OF MISREPRESENTATIONS

As to the first charge of misrepresentations, the Trial Court in its opinion (pp. 1423-1428) compares some of the representations in the letters and telegrams with the facts established by Bancroft's second report, and then concludes (p. 1428):

“In view of this correspondence and Bancroft's second report, it is impossible to find that the letters and telegrams in evidence from defendants to Taylor prior to April 2, 1919, contained fraudulent mis-statements or that by anything in such letters and telegrams Taylor was misled.”

Assignments of Errors III and IV (p. 1470) set forth that the Court erred in making such findings.

The plaintiff testifies (p. 26) that after he had entered

into the contract and option of January 16th he engaged Mr. Howland Bancroft, a mining engineer, to examine the mine and received his report on or about February 20th following, having been informed by Mr. Bancroft by telegram, letter or otherwise as to the general contents of the report a day or two previous. This report (Plffs. Ex. 15, p. 1476) disclosed 8,111 tons of ore, which was commercial, with tungsten selling at \$6.00 a unit, and that the average tenor of this ore was 1.75 per cent tungsten trioxide. This is found to be a fact by the Court in its opinion (p. 1423) and is not disputed. On February 24, 1919, the plaintiff wrote Mr. Nenzel, (Plffs. Ex. 1, p. 779) advising him that he did not believe there was the remotest chance of interesting anybody in the purchase of the property at the half million dollar price and suggested a modification of the option. On February 14, 1919, after examination of the mine had been made by Mr. Bancroft, Mr. Nenzel wrote a letter (Plffs. Ex. 2, p. 781) to the plaintiff in which he stated:

“I might add that the conditions at the mine are exceptionally bright. On the No. 2 South workings we have opened up an ore body which is over 15 feet wide, and a good grade of ore. On the No. 1 South we encountered a dyke sometime ago and which cut off the ore. Yesterday we drove through the dyke and relocated the ore, which is of a good grade, but as yet insufficient work has been accomplished to determine the extent of the ore body.”

On February 24th Mr. Nenzel wrote to the Consolidated Ores Company (Plffs. Ex. 3, p. 783) which was owned and controlled by the plaintiff, as follows:

“As per my letter of recent date, I hereby wish to give the information of the telegram I sent to Captain Taylor at New York yesterday:

‘The number one drift South is eighty-five feet beyond Granite Dyke Ore low grade Stop Drift number one sixty feet beyond Bancroft sampling Stop Number Two So. tunnel sixty feet beyond Bancroft sampling. Value of ore one and one-half per cent Stop Number two North two hundred seventy-five feet from shaft average width of vein nine feet ore milling one per cent Stop Number two South one hundred feet beyond Bancroft sampling average width of vein four and one-half feet value of ore one-half of one per cent. Number three North drift sixty feet from shaft vein ten feet wide value of ore one and one-half per cent. Number three South fifty-five feet from shaft five feet wide one per cent ore Stop Main working shaft has been advanced twenty-four feet all in good ore contract made yesterday to sink ninety feet next thirty days Mine in much better condition than when Bancroft last sampled same.’ ”

On March 7, the plaintiff wrote the Tungsten Company (Plaintiff’s Exhibit 4, p. 785):

“The results of development work in the mine, as recently reported, are certainly most gratifying and if they continue as well I think there is a chance that by the beginning of April I may be able to persuade some New York people to advance the necessary money to clean up all the company’s indebtedness in return for some modified form of option.”

On March 10th Mr. Nenzel wrote the plaintiff (Plaintiff’s Exhibit 6, pp. 788-789):



"The main shaft has been sunk to a depth of 60 feet since our telegram to you giving the new development work and we are glad to inform you that we have encountered some very rich ore. The ore contains so much scheelite that we are unable to handle more than 40 tons per hour in the mill, when working on ore taken from the shaft. How long this will continue we do not know, but it certainly looks very encouraging. Another encouraging feature of the new development is that the ore does not contain nearly as much sulphides as it did between the second and third levels and from the present indications it would appear as though we are penetrating an oxidized zone."

Mr. Nenzel again wrote to the plaintiff on March 21st, 1919 (Plaintiff's Exhibit 9, p. 795):

"The mine is looking better than ever. We started cutting the station on the fourth level and we will drift 20 feet each way at this point and then continue the shaft on down. The ore for the past thirty feet has been of an exceptionally high grade character."

On March 25, 1919, the defendant, L. A. Friedman, wired the plaintiff from Denver (Plaintiff's Exhibit 10, p. 796):

"Suggest that you and Bancroft come here sometime this week. All stockholders are here now and am sure you will find mine development fulfilling your most sanguine expectation and am confident that we could arrive at some modified arrangement as suggested in your correspondence."

The plaintiff in his letter (Plaintiff's Exhibit 12, p. 798) of March 25th to the defendant L. A. Friedman as President of the Tungsten Company in response to said telegram stated:



"I suggest that Poole come to Denver during the first week in April bringing **exact data as to development work, assays, etc.,** so that he and Bancroft together can work up a **definite tonnage statement of present ore developed.**"

On March 27, 1919, Mr. Nenzel wrote to plaintiff (Plaintiff's Exhibit 13, pp. 801-802):

"Owing to the consolidation of the Rochester properties, now under way at Rochester, Mr. Poole as well as his engineering force, has been rather busy and **no accurate survey of mine development** has been made since Mr. Bancroft was out here. We, however, **expect to have our engineer out there within a week or so to check up the development work and no doubt you will receive a report noting the changes that have been made since Mr. Bancroft completed his work of examination.**

I might add that the fourth level has been cut and in drifting North the vein is seven feet wide and in drifting South the vein is ten feet wide, all in exceptionally high grade ore. It will probably take us two or three days to put up a raise from the 350 to the 300 foot level in order to put in another pocket so we can have a larger pocket capacity in the mine and then we will again continue the sinking of the main shaft to the 500 foot level."

The foregoing documentary evidence which stands unchallenged conclusively proves that the defendants made the representations as alleged in the complaint, to-wit:

"By means of telegrams and letters informed plaintiff that further and new development work had been carried on within said mines, mining claims and mining rights of the Nevada Humboldt Tungsten Mines Company, which had developed and placed in sight, blocked out and made ready for mining, large quantities of scheelite ore of commercial value and capable of being concentrated and the concentrates so returned being of great value."

They are not expressions of opinion; they are not estimates; they are not guesswork on the part of the senders of the telegrams and letters, but positive representations of existing facts, positive statements of further and new development work which had developed and placed in sight large quantities of scheelite ore of commercial value.

The complaint (p. 1131) alleges that these representations were false. The Court, as above stated, has found these representations to be substantially true and the question of whether the Court erred in making such findings comes now before this Court for determination.

The Trial Court, in arriving at its conclusion, starts out in its opinion (p. 1424) by referring to the letter which Nenzel wrote Taylor February 14th (Plff's Ex. 2, 781). The Court says:

"February 14th Nenzel wrote Taylor that conditions at the mine were exceptionally bright. 'On the number 2 South workings we have opened up an ore body which is over 15 feet wide and a good grade of ore. On the number 1 South \* \* \* Yesterday \* \* \* we re-located the ore, which is of a good grade.' (Exhibit 2)."

No comment is made by the Court with reference to these representations, although it appears from Plate No. 5A (Plff's Ex. 20, p. 1507) attached to Bancroft's supplemental report dated June 2nd, 1919, (Plff's Ex. 19, p. 824) which report the defendants concede to be true, that these representations were not true, and that there was no ore body 15 feet in width of a good grade of ore.

The Court goes on and says:

"Ten days later, February 24th, Nenzel wired Taylor," and after quoting the telegrams from Nenzel to Taylor of February 24th (Plff's Ex. 3, p. 783), proceeds to make a test as to the correctness of the representations therein con-

tained by comparing same with the figures and assays shown on Plate No. 5A (Plff's Ex. 20) attached to Bancroft's Supplemental Report (Plff's Ex. 19). For convenience sake the Court divided the statements contained in the telegrams into six items. These representations contained in the telegram and the observations of the Court regarding same are as follows:

#### ITEM I:

"The number one drift South is 85 feet beyond Granite Dyke. Ore low grade."

This item the Court found to be correct (p. 1425). Bancroft's report (p. 1507) shows ten samples taken by him on this drift at eight foot intervals, as follows:

Width in Feet	Per ct W03	Factor
5.30	.00	.0000
5.25	.00	.0000
3.80	.00	.0000
5.30	.00	.0000
6.16	.00	.0000
4.50	.35	1.5750
4.80	.00	.0000
2.00	3.70	7.4000
3.20	.00	.0000
1.70	.25	.4250
<hr/> 42.01		<hr/> 9.4000

Average Width 4.2 ft.

Average of above ten samples obtained by dividing 9.4000 by 42.01 gives an average of .22 per cent W03; dividing 42.01 by 10, the total number of samples, gives an average width of the sample taken as 4.2 ft.

The figure 85 feet obviously means no more than that the drift has been extended that distance.

It will be seen that out of the ten samples taken, seven



showed no tungsten; one, .25 per cent; one, .35 per cent, neither of which are commercial ore, and only one sample of the ten showed ore of a commercial character; in that single instance the sample was only two feet wide; the average of this ore, as shown by said report, is .224 per cent which is far below commercial grade, and this item, instead of being regarded as low grade ore would be considered as not showing any ore and worthless.

## ITEM 2:

“Drift number one 60 feet beyond Bancroft sampling. Number two South tunnel 60 feet beyond Bancroft sampling. Value of ore one and one-half per cent.”

As to this item, the Court says (p. 1425):

“Bancroft’s assay taken 60 feet beyond his first sampling in No. 2 South was 2 per cent instead of 1.50 per cent. The average of Bancroft’s 7 assays in that drift was .63 per cent.”

Bancroft’s report (p. 1507) shows seven samples taken by him on this drift as follows:

Width in Feet	per ct W03	Factor
3.8	0.20	.7600
4.75	.60	2.8500
4.70	1.45	6.8150
4.10	.20	.8200
5.00	trace	.0000
4.00	0	.0000
3.66	2.00	7.3200
<hr/>		<hr/>
30.01		18.5650
Average Width 4.29 ft.		

Average of ore is 18.5650 divided by 30.01, which equals .60 per cent W03; dividing 30.01 by 7, the total number of samples, gives an average width of the sample taken as 4.29 ft.



This ore body referred to in Item 2 is the same ore body which Nenzel in his letter of February 14th (Plff's Ex. 2, p. 781) referred to as being "over 15 feet wide and a good grade of ore." It will be seen that of the seven samples taken by Bancroft, there was only one which sampled 2 per cent, and the average of the seven samples taken was .60 per cent, instead of the value being one and one-half per cent as represented in the telegram, and the average width was 4.2 ft. instead of 15 feet as represented by Nenzel in his letter of February 14th, above referred to. The Court in this instance has considered the one sample showing 2 per cent ore instead of taking into account the average of the seven samples covering the vein as a whole. The amount of ore cannot be determined from only one sample and the representation was intended to apply to the entire distance of extended development referred to. Certainly no one could afford to mine ore only from a particular point on a particular drift.

### ITEM 3:

"Number 2 North 275 feet from shaft, average width of vein 9 feet. Ore milling one per cent."

As to this item, the Court finds:

"Bancroft's assay, taken 275 feet North from the shaft in No. 2 was 1.60 per cent instead of 1 per cent."

Bancroft's report (p. 1507) shows sixteen samples taken by him on this drift as follows:

Width in Feet	per ct W03	Factor
7.20	.80	5.7600
6.10	0	000
7.66	.15	1.1490
6.20	0	000
5.30	0	000
.75	0	000
5.50	.10	.5500
5.00	.50	2.5000
3.50	0	000
2.60	0	000
1.70	0	000
5.33	.25	1.3325
4.20	.70	2.9400
6.40	.50	3.2000
5.00	.25	1.2500
4.50	1.60	7.2000
<hr/> 76.94		<hr/> 25.8815

Average Width 4.81 ft.

Average of ore is 25.8815 divided by 76.94, which equals .34 per cent W03; dividing 76.94 by 16, the total number of samples, gives an average width of the sample taken as 4.81 ft.

Here again the Court picks out one solitary point which was 267 ft. North from the shaft, and finds that the ore assayed 1.60 per cent instead of 1 per cent, as represented; whereas the Court should have taken the average of the sixteen samples taken, which was only .34 per cent and which is not commercial ore. Furthermore, the Court entirely overlooks that part of the representation as to the width of this item, which instead of being 9 ft. as represented, is only 4.81 ft. or practically only one-half of what it was represented to be.

## ITEM 4:

"No. 2 South 100 feet beyond Bancroft sampling; average width of vein four and one-half feet; value of ore, one-half of one per cent."

The Court is correct in saying that this item is inaccurately designated, as Bancroft's final report does not show any extension on level No. 2 South beyond the 60 feet from Bancroft's sampling as set forth in Item 2 above.

## ITEM 5:

"Number 3 Northdrift 60 feet from shaft. Vein 10 feet wide. Value of ore one and one-half per cent."

As to this item, the Court finds:

"Bancroft's nearest assays 60 feet North on No. 3 were 1.20 per cent and 1.35 per cent, instead of 1.50 per cent. Five assays taken by Bancroft within 60 feet from shaft averaged 1.89 per cent."

Bancroft's report (p. 1507) shows five samples taken by him on this drift as follows:

Width in Feet	per ct W03	Factor
4.66	1.07	4.6600
8.50	2.75	23.3750
8.00	1.15	9.2000
5.40	3.35	18.0900
6.00	1.20	7.2000
<hr/> 32.56		<hr/> 62.5250

Average width 6.51 ft.

Average of ore is 62.5250 divided by 32.56, which equals 1.92 per cent W03; dividing 32.56 by 5, the total number of samples, gives an average width of the sample taken as 6.51 ft.

The actual condition obtained by multiplying the average width of 6.51 feet by the average percentage of 1.92

gives us a condition of 12.5184, as compared with the represented condition of 15.0000, obtained by multiplying the represented width of 10 feet by the represented percentage of 1.50; or, in other words, the conditions of the mine as to this item were represented to be 20 per cent better than they actually were. The Court in this instance entirely overlooked the discrepancy between the width of the ore body, as represented, and as shown on Bancroft's report.

#### ITEMS 6 and 7:

As to items 6 and 7, the Trial Court's view are substantially correct.

We submit that the Court came to a wrong conclusion as to the correctness of these representations by taking isolated samples instead of the average with reference to certain items and by reason of its overlooking and not considering the important discrepancies between the representations and the true facts as to the widths of the different bodies of ore mentioned in the telegram and which greatly reduced the amount of tonnage of the ore in sight in the mine. The correctness of Bancroft's report was not questioned on the trial. An examination of same conclusively establishes the falsity, as above pointed out, of the foregoing representations contained in the telegram of February 24th which Nenzel admits having sent to Taylor and, we submit, clearly shows that the Court erred in finding said representations to be true.

In this connection it is quite significant, too, that counsel for defendants carefully avoided to ask either of the defendants Nenzel or Friedman any questions in regard to the foregoing letters and telegrams sent by them to the plaintiff or as to any of the representations of facts therein made by them as to the development of the mine. Following the above representations by Nenzel, Mr. Taylor



on March 7th wrote the Tungsten Company (Plff's Ex. 4, p. 785):

"The results of development work in the mine as **recently reported** are certainly most gratifying and if they continue as well I think there is a chance that by the beginning of April I may be able to persuade some New York people to advance the necessary money to clean up all the company's indebtedness in return for some modified form of option."

From this it will be seen that Mr. Taylor relied upon the reports which he was receiving and that he had in mind and called to the attention of the defendants the possibility of making a new arrangement whereby the necessary money could be obtained to clean up the company's indebtedness. Unquestionably Taylor's suggestion of raising money to pay the debts of the company was prompted by the **favorable reports which he had received from Nenzel**. The company needed the money badly and they were very anxious to have Taylor obtain it for them. Having succeeded in interesting him along these lines and by means of their representations having induced him to make this suggestion, they seized upon it and followed it up with several telegrams and letters from Nenzel and Friedman above set forth, each time giving more and more favorable reports of the new and further developments of the mine. In Nenzel's letter of March 10th he calls attention to the fact that they have encountered some very rich ore and that the ore contains so much scheelite that they are unable to handle more than 40 tons per 24 hours in the mill, and on March 21st he presses the matter further and writes:

"The mine is looking better than ever. The ore has been of an exceptionally high grade character."

And again on March 25th, Friedman, President of the company, wires:

“Am sure you will find mine development fulfilling your most sanguine expectation.”

and, anxious to bring the matter to a head, suggests that Taylor and Bancroft come to Lovelock that week so that some modified arrangement might be arrived at. Taylor has now become very much interested, relying upon the glowing reports he had received, but being mindful of the fact that in order to raise money on a mining proposition it is absolutely essential to be able to present to the parties advancing the money facts and figures showing the tonnage and value of ore in sight, on March 25th, in response to the letter which he received from Friedman, suggested that the defendant Poole come to Denver during the first week in April

**“bringing exact data as to development work, assays, etc., so that he and Bancroft together can work up a definite tonnage statement of present ore developed.”**

The Court will note that Taylor was asking for **exact** data of development work and assays and a **definite** tonnage of ore developed. Nenzel replied on March 27th that no **accurate** survey of the mine development had been made since Mr. Bancroft was out there, but that he expected to have their engineer out there within a week so as to check up the development work and “no doubt you will receive a report noting the changes that have been made since Mr. Bancroft completed the work of examination.” This letter contained the further favorable news which was false that “the fourth level has been cut and in drifting North the vein is seven feet wide, and in drifting South the vein is ten feet wide, all in exceptionally high grade ore.” Following this correspondence, Poole,

Nenzel and Murrish proceeded to Denver, arriving there on Sunday, March 30th, 1919, where they met Mr. Taylor, and this brings us to the point where the second charges of misrepresentation are alleged to have been made.

## SECOND CHARGE OF MISREPRESENTATION

As to what the Trial Court in its opinion (p. 1428) refers to as the second charge of misrepresentation alleged in the complaint, namely,

“that Poole, Murrish and Nenzel, at Denver falsely and fraudulently represented to Taylor that since the examination of the mining claim by Bancroft in January additional ore bodies had been developed, and that there was then blocked out, in sight and ready for mining over 60,000 tons of scheelite ore, which would carry an average of 1.75 per cent tungstic acid; that such representations were false, made for the purpose of inducing him to undertake and carry out the terms of the agreement of April 2nd, and were relied on by him to his prejudice.”

the Court states:

“In my judgment Taylor was neither misled nor deceived by the defendants.”

and also finds that

“The evidence is not sufficient to show that the alleged false representations as to tonnage in the mine were made; and even if there were such representations, Taylor was not thereby induced to enter into the contract of April 2nd, or to attempt to perform its conditions. That contract, as well as the option of January 16th, expired by limitation June 16, 1919; prior to that date no deposit in the Wells Fargo Nevada National Bank of San Francisco of an amount sufficient to liquidate the indebtedness of the defendant corporations were made by or for Taylor. He never performed what he agreed in the contract to do; he never made an unconditional offer of performance and never prior to June 16th was he actually ready,



able and willing to perform unconditionally."

In the Assignment of Errors "V" and "VI," the plaintiff assigns as errors on this appeal that the Court erred in making said findings and arriving in its said findings and conclusions of law.

Pursuant to the forgoing correspondence, Nenzel wired Taylor on March 28th (Plff's Ex. 14, p. 803):

"Murrish, Poole and I leave number twenty tomorrow morning arriving Denver Sunday afternoon."

### TAYLOR'S TESTIMONY

Taylor testifies that they arrived in Denver on Sunday, March 30th, and came to his office in the Symes Building, and that he had there at that time the original supplemental report of Bancroft which had Plate No. 5 (Plff's Ex. 15, p. 45) attached thereto; that they were together that afternoon engaged in a general discussion about the tungsten situation, conditions of the market, **developments and conditions of mine**, probabilities that he would not exercise the original option and questions of policy of the company, and so forth; that he showed Poole Bancroft's original report and asked him if he would like to read it and Poole said he would, whereupon Taylor told him he could take it with him to his hotel that night and bring it back the next day (p. 46). Taylor asked Poole to "plot on that map information which he had as to the recent developments at the mine or developments since Bancroft's report had been made, at the mine" (p. 47); that Poole, Nenzel and Murrish came down to his office Monday morning, the following day, and he asked Poole if he had "put on the original Bancroft report memoranda showing the additional tonnage of ore with its values, that had been blocked out since his report;" and that Poole stated "that he had



not had an opportunity to do that; he had with him some maps, mining maps or reports, records."

Taylor thereupon said: "Well, let us get the figures down now." Mr. Poole gave him lines and figures which were put down by him, Poole giving the tonnages and assay values, widths of ore, and other memoranda that was put on at that time, with lines to represent the limits of the ore bodies, together with the figures of commercial ore which he claimed were shown by those lines. These pencil lines and figures were placed on Plate No. 5 on Monday, the day followng their arrival (p. 48). Poole stated to him certain areas blocked out and asked him to put it down on this map and Taylor placed it on the map. All of the pencil lines and all the pencil memoranda were placed on the map by Taylor in Poole's presence, Poole reading the figures and standing over Taylor while Taylor put the figures down. Some of these figures Poole read from his map and some of them from memoranda that he had with him. Poole brought with him a large map that morning (p. 49). This map which Poole had was what was called the mining map (Plff's Ex. Y) which Poole says (p. 546) he had Huntington (the Tungsten Company's engineer) prepare and which he took with him to Denver and which he turned over to Taylor at his office on his arrival in Denver on Sunday. Murrish was there part of the time (p. 50) and Nenzel all of the time (p. 51) while Taylor was putting the lines and figures down on the map which he had and they could not help hearing the figures given and seeing what was being done while they were in the room as it was a small room. Poole said that he had not had an opportunity to put the lines and figures on, but that he had read Bancroft's report and they discussed it at that time (p. 53). After these notes were placed upon Plate No. 5 of Mr. Bancroft's report on Monday, Poole stated to Taylor in the presence of Nenzel and Murrish "that there was

over 60,000 tons of ore developed within the blocks indicated by those lines by the pencil lines shown on the map, which would average over 1.75 per cent tungstic acid" (p. 56). This statement was made after the figures had been put down (p. 57).

Summarized, Taylor's story up to this point is that pursuant to the correspondence which they had had, Poole, Nenzel and Murrish arrived in Denver on Sunday, March 30th, and went to his office where they met him; that after some discussion Taylor gave Poole Bancroft's original report, which had attached to it Plate No. 5, which showed 8,111 tons of ore developed. Poole had the mining map with him which he claimed showed the recent developments of the mine since the first examination made by Bancroft, and Taylor requested Poole to take Bancroft's first report and Plate No. 5 to his room in the hotel and place thereon the memoranda showing the additional tonnage of ore with its values that had been blocked out since Bancroft's report; that Poole took the report and returned to Taylor's office the next morning, Monday, and stated that he had read Bancroft's report but had not had an opportunity to add to it the memoranda showing the additional tonnage and values of ore which he claimed had been blocked out since Bancroft's report; that thereupon Taylor suggested they proceed at once to do so and that Poole furnish the lines and figures from the mining map which he had to Taylor and Taylor put them down on the photostat Plate No. 5, which was attached to Bancroft's original report so as to make it correspond with the mining map; that after the figures had been put down, Poole, in the presence and within the hearing of Nenzel and Murrish stated that there was over 60,000 tons of ore developed within the blocks indicated by the pencil lines shown on the map which would average over 1.75 per cent tungstic acid. Taylor testifies that these lines and figures were put down and

said statement of tonnage and values was made by Poole on Monday, March 31st, and that following this on Tuesday and Wednesday they carried on negotiations which finally resulted in the agreement which was entered into on April 2nd.

## POOLE'S TESTIMONY

Poole's story is that he, Nenzel and Murrish arrived in Denver on Sunday, March 30th, and saw Taylor on that day at his office, probably an hour after their arrival; that on Monday they saw Taylor again at his office (p.463); that on their arrival on Sunday exhibited to them Bancroft's original report, Plate No. 5 (p. 464); that at that time there were no pencil marks or lines on Plate 5; that he does not know when they were placed there, nor by whom, and that he did not see them placed there and was not present on any occasion when they were placed there; he denies that on Sunday Taylor asked him to plot on Plate 5 or on any other plate or plates recent developments at the mine or developments since Bancroft's report had been made (p. 465); that he was present at Taylor's office on Monday and that Nenzel and Murrish were present all the time (p. 466). He denies that Taylor on Monday asked him if he had put memoranda on original Bancroft report and denies that he stated to Taylor that he had not had an opportunity to do that; also denies that Taylor suggested putting down figures on that occasion and that no figures were given by him or put down on the map by Taylor on that occasion (p. 467). He testifies that no line or figure or memoranda giving tonnages or assay values or width of ore or any other memoranda was put down by Taylor on Plate 5 on Monday, March 31st, in his presence (p. 468); that he did not on Monday say to Taylor that certain area in the property was blocked out, and that the pencil marks on Plate 5 were not placed there in his presence



(p. 469); that he did not on that occasion read the figures to Taylor; did not stand over his chair and tell him any figures or lines; and that he did not tell Taylor on that day or any other day that he had not had the opportunity to put the lines and figures upon Plate 5 (p. 470). He denies making any statement on that occasion that there were over 60,000 tons of ore developed within the blocks indicated by the pencil lines shown on Plate 5, which would average over 1.75 per cent tungstic acid (p. 471). He denies that he stated to Taylor that the figures on Plate 5 represented the state of tonnage of commercial ore represented within the lines upon the map, and denies that he on that occasion or ever stated to Taylor that the figures 42,728, 9,250 or 4,200, appearing upon Plate 5 represented the tonnage of commercial ore existing between the lines drawn on that map from the bottom of the shaft to a point on level number 2, or any other part or portion of that map (p. 475) and denies that he ever said to Taylor in substance or effect that he knew definitely from the data upon Plate 5 that there were 60,000 tons of ore or any other number of tons in any portion of the mine; denied that he calculated on that day or at any other time or gave to Taylor any of the above figures (p. 476); denies that he said to Taylor on that occasion or on any occasion that there were 60,000 tons of ore in sight which would average 1.75 per cent tungstic acid (p. 478); in fact, he denies having made any statement whatever to Taylor on either Sunday or Monday regarding the amount of tonnage of the ore in the mine, but admits on cross-examination that on Sunday he gave Taylor the mining map (Plff's Ex. Y, p. 546) and called his attention to the percentages and distances as graphically represented thereon (p. 547); and that he showed the mining map to Taylor at that time and when he left took with him Plate 5 and returned to Taylor's office the next morning, but that on both of those days



no representation was made by him with regard to tonnage or percentage of ore. On Tuesday, April 1st, he says that he again met Taylor at his office and that there was no discussion of the tonnage of ore in the mine on that day, but that on that day Taylor had a discussion with Murrish which Poole heard with regard to the advantages or disadvantages that would come to Murrish as a stockholder in the event that a proposition (Defendant's Exhibit B) then presented to them by Taylor should be accepted by them (p. 479). He testifies that Taylor said, "If you accept this present proposition your stock, if the mine lasts a considerable period, will be worth more to you than if I exercise my option of January 16th" and that Taylor said that he contemplated if he got such a deal as therein proposed from them that he would go East and try and interest some Trust Company and he felt that 35,000 tons on an \$8 basis, and 25,000 tons on a \$10 basis, would put the mine on a **banking basis**, and that thereupon they tentatively agreed upon the terms in that proposition (p. 480); that he, Nenzel and Murrish took this document (Defendant's Exhibit B) to the hotel in the evening, and read it over carefully and scrutinized it and came to the conclusion that they had not understood what Mr. Taylor was proposing in that document (p. 481); that he and Nenzel gave their assent orally to the proposition finally embodied in Exhibit C annexed to the plaintiff's complaint, that is, the contract of April 2nd, Tuesday evening, April 1st, and that Murrish gave his consent Wednesday morning, April 2nd (p. 484); that they all met at Taylor's office on Wednesday morning of April 2nd and Mr. Taylor presented a typewritten contract in which he had essentially embodied the terms as Nenzel and Poole had agreed with him on Tuesday night (p. 485); that after some discussion it was decided to change some of the phraseology and Mr. Taylor

proposed that Murrish rewrite it and embody the same essential facts in what he considered proper legal phraseology; whereupon Mr. Murrish and Mr. Taylor then retired to another room and started to dictate the agreement to a stenographer (p. 486); that while said dictation was in progress Taylor presented one of the copies of the photostat called Plate 5 to Poole and said, "I wish you would put the additional development work on it that has been done since Mr. Bancroft's examination of January 22nd" (p. 487). This was on Wednesday, April 2nd, in the forenoon. Nenzel was present, but Murrish was in the other room dictating the contract (p. 488). That Taylor said, "I wish you would put additional work on there which has been done since Bancroft's examination and also I wish you would show the additional tonnage of ore which has been developed by that additional work and use the method that Bancroft has used in his report," to which Poole replied, "Mr. Taylor, it is very easy to put additional work on there, but it is not easy to calculate the additional tonnage according to Bancroft's method, because it is not clear what method Mr. Bancroft has used in his report in calculating tonnage. 'Well,' he says, 'I have the tonnage method used by Mr. Bancroft.' He then got some memoranda or written document of some kind setting forth how Bancroft calculated tonnage according to different development." Thereupon they proceeded to transfer the lines and figures from the mining map Y to the photostat Plate 5. Taylor did the mathematical calculations from the dimensions Poole had given him and from the divisions for tonnage and Poole entered them on the photostat map (p. 494). Poole admits that 4200 was certainly one of the figures that they got as the result of their calculation, but is not certain positively as to the others (p. 495), but he is certain that there was no block in which there was 42,000 tons and that the sum total of the tonnage represented in all the blocks

was not 42,000; that it was less; but that he did not on that occasion or on any occasion prior to the entering into the contract (Exhibit C) state or represent to Taylor "that there were in that mine either blocked out or in sight or developed any quantity of ore whatever" (p. 496; that the contract (Exhibit C) was signed subsequent to the conversation when the lines and figures were put down on the photostat, and that there was not any other or further discussion in which tonnage or development or figures of ore or ore bodies was mentioned (p. 497); that he cautioned Mr. Taylor against the unreliability of those statements on the map and told him those figures were merely estimates which had been placed on that map by John Huntington who was the mining engineer who had brought this map up to date, and that Mr. Huntington had got that information from Mr. Morrin who was the superintendent, and Mr. Morrin had arrived at those values by panning in the mine; and he knew as well as he did that panning was a very unreliable way of arriving at the value of ore (p. 498); that he had no other conversation with Mr. Taylor after the contract was signed in which tonnage was mentioned or any figures were discussed (p. 499).

Summarizing Poole's story, he, Nenzel and Murrish saw Taylor on Sunday, Monday, Tuesday and Wednesday, at none of which times was there any statement whatever made by Poole as to the development, tonnage or percentage of ore or ore bodies in the mine. He admits that he saw Bancroft's original report on Sunday and that he on that day turned over the mining map to Taylor and called his attention to the extensions and percentages shown thereon. No explanation is made by him as to what they were discussing on Sunday or Monday, but he is sure that neither he nor his associates mentioned tonnage at any time. He claims, however, that on Tuesday Taylor presented Exhibit B, out of a clear sky, which contained fig-



ures showing tonnage required to put the proposition on a banking basis, 35,000 tons on an \$8 basis, and 25,000 tons on a \$10 basis. Upon being asked where Taylor obtained these tonnages he said they were a figment of Taylor's imagination. This document (Exhibit B) according to Poole's story, constituted a proposition made by Taylor which started their negotiations and finally was accepted by them and resulted in the Contract of April 2nd.

### NENZEL'S TESTIMONY

Now, coming to Nenzel's story, counsel for defendants adroitly avoids asking him anything about his telegrams and letters which he sent Taylor prior to their meeting in Denver, or about anything which transpired before that meeting, when counsel for plaintiff on cross-examination was prevented from inquiring into same by objection of defendant's counsel (pp. 613-614). Counsel starts right off by interrogating Nenzel as to what occurred at the Denver meeting (p. 601). Nenzel, after testifying that he, Poole and Murrish were with Taylor in Denver on Sunday, March 30th, Monday, March 31st, Tuesday, April 1st, and Wednesday, April 2nd, says that neither he, Poole or Murrish on any of said days ever told Mr. Taylor that this mine contained any number of tons or any percentage of tungs-ten; that it was not mentioned at all as far as they were concerned; that it was not mentioned on Wednesday until after Mr. Murrish and Mr. Taylor had started to drafting the contract (p. 616); that after they had agreed on the deal and Mr. Murrish was drawing the papers there was some general discussion with reference to tonnages and percentages between Mr. Poole and Mr. Taylor, which resulted in the photostat map; but that all of this took place after they had agreed upon the deal and Murrish was drawing the contract (p. 617); that Poole had the mine map and Taylor had a photostat and that they transferred



from the mine map which Mr. Poole had on to the photostat which Mr. Taylor had the extensions of the development work which was put on the mine map by Mr. Huntington before they left Lovelock for Denver. These were given by Mr. Poole to Mr. Taylor at that time. They had been called to Mr. Taylor's attention on Sunday; they were already on the mining map when they brought it to Denver (p. 624). Mr. Poole explained to Mr. Taylor that the footages of development were accurate, as he could vouch for Mr. Huntington's accuracy in making surveys, but that the assays thereon or values were estimates made by Ben Morrin and placed on the map by Mr. Huntington and Mr. Taylor should take them for what they were worth (p. 627); that Mr. Taylor replied that "if they were untrue it would affect Mr. Poole personally in the future, or words to that effect" (p. 628). Although Poole testified that Taylor presented a proposition (Deft's Ex. B) at their meeting in Denver on Tuesday, which formed the basis of their negotiations and from which the contract of April 2nd resulted, and although Poole testified that he, Nenzel and Murrish took Exhibit B with them to the hotel that evening and carefully examined and scrutinized it, it will be noted that no question whatever was asked Nenzel by counsel for defendants about important document, Defendant's Exhibit B.

Summing up Nenzel's testimony as to what occurred on the four days at Denver, he corroborates Poole's testimony to the effect that neither he, Poole or Murrish ever told Taylor that the mine contained any number of tons or any percentage of tungsten, and that it was not mentioned at all by them; that not until Wednesday, after the deal had been agreed upon, and Murrish was drawing the papers, was there any discussion, and then only a general discussion between Poole and Taylor, regarding tonnages or percentages; he also states that Poole showed Taylor the min-

ing map on Sunday and showed him how much work had been done since Bancroft's report and that Poole explained to Taylor that the footages of the development were accurate and he would vouch for Huntington's accuracy in making the surveys, but that the assays thereon or values were estimates made by Morrin and placed on the map by Mr. Huntington and Mr. Taylor should take them for what they were worth. It will be noted that Poole in his testimony in this connection stated, "But I won't vouch for these estimates on here as having any meaning," and "I want you to get that clearly in mind because I don't want to make any misrepresentations to you," to which he testified Taylor replied, "the only effect that any misrepresentation on your part would have on me would be to cause me to lose confidence in you and, therefore, I would not use you as superintendent of the property," whereas Nenzel testifies that Poole stated "that the assays thereon or values were estimates made by Ben Morrin and placed on the map by Mr. Huntington and Mr. Taylor should take them for what they were worth," to which Mr. Taylor replied, "if they were untrue it would affect Mr. Poole personally in the future, or words to that effect." Other than the above stated attempts of Nenzel to corroborate Poole, there is nothing to Nenzel's testimony. He does not state, nor is he asked, about what they were doing during those four days. He makes no reference to, nor is asked, about the Defendant's Exhibit B, which Poole testifies formed the basis of the negotiations which resulted in the contract of April 2nd. No explanation is offered by him as to what took place during those four days or how they happened to come to an agreement on April 2nd. His testimony practically amounts to this: that they all met in Denver for the purpose of making a deal; that they were together during all of the four days; that during all of that time they did nothing, said nothing; but that on the last day, on Wed-

nesday, they signed a contract; that there was no discussion of tonnage or percentages by any of them other than some general discussion between Poole and Taylor while the contract was being typewritten.

### MURRISH'S TESTIMONY

We next come to Murrish, the lawyer of the party. He says he was in Denver on Sunday, Monday, Tuesday and Wednesday with Taylor, Poole and Nenzel (p. 630). He testifies that during all of the times while he was in Denver, so far as he was concerned, there was no representations or statements of any kind made by either himself, Mr. Nenzel or Mr. Poole as to the amount or character of the ore in the mine (p. 649). The only testimony given by Mr. Murrish regarding Defendant's Exhibit B, upon which Poole placed so much importance, was in reply to the question: "Do you remember that document being used down there in conversation?", to which he replied, "Yes sir" (p. 654). As to the mining map which was used at the meeting in Denver, he was asked, "And the map referred to by Poole and marked Exhibit Y, do you know what that is; did you see that in Court? A. Yes. Q. Was that used down there in the discussions and conferences? A. Yes." This is all he had to say about this important document. Then he further testifies that he had a conversation with Mr. Taylor at the Palace Hotel at Denver with reference to his refusal to sign the agreement of April 2nd when that matter was discussed, and states that practically all that took place at that time was "that Mr. Taylor said I had given my word to him that I would sign it, and I said that I had not given my word, but if he said I had, that I would sign it." He further states that Nenzel and Poole were present at the time. He also testifies that he did not hear the subject matter of Bancroft making any further



examination of the property mentioned by Taylor or Poole at the Denver conference, and that he did not hear the subject matter or the results of the Morrin sampling being put upon the mine map being discussed by either of them, and this constitutes about all Mr. Murrish had to say about what occurred at the Denver meeting.

The financial distress of the Tungsten Company at the Denver meeting was shown throughout the testimony and was admitted by the defendants' counsel, Mr. Cooke, when he said, "I will say very frankly my purpose is to show they went down there oppressed by reason of the financial condition of the company, and these debts piling on them, and didn't go down there simply for the purpose of getting a substitution of creditors."

In analyzing the testimony bearing upon the charge that the individual defendants (except Loring) falsely represented that 60,000 tons of 1.75 per cent tungsten ore was developed in the mine, let us keep in mind these admitted facts:

(1) That the Tungsten Company was in dire financial distress, owing its creditors \$220,000 or more.

(2) That Taylor had telegraphed and written, asking for "definite statements of development work accomplished, assays, size of ore shoots and tonnage."

(3) That Taylor was considering the property on a "banking basis."

(4) That Taylor was to raise the money, \$220,000, for the Corporation "by borrowing."

The defendants had been advised by Taylor that there is no hope of his being able to exercise his option of purchase of January 16th, 1919. It is necessary to raise funds and the defendants for this purpose are anxious to enlist the services of Taylor. The only method suggested for meeting this emergency is through the medium of a loan sufficiently large in amount to pay off the indebtedness of



the Tungsten Company. At the time Taylor entered into the option contract with the defendants on January 16th he had an examination made by Bancroft, an engineer, of the amount of ore developed in the mine, which showed a tonnage of 8,111 tons. This examination was made from January 19th to January 27th, 1919, as shown by Bancroft's report (Plff's Ex. 15, p. 1476). At this time Bancroft, as part of the job he was doing for Taylor, also outlined a plan for the further development of the mine, which was accepted by the defendants as a feasible plan, and they agreed to carry out the development along the lines indicated by him. On the 7th day of March, 1919, Taylor wrote Poole, "Could you not arrange to send us by mail once a week a **definite statement of work accomplished, assays, size of ore shoots, etc.**, so that I may keep this work plotted up on the map of development work." Later, on March 25th, and after Taylor had informed the defendants that he would probably not be able to go through with original option contract and after having received all of the glowing reports in connection with development of the mine, as set forth above under the first charge of misrepresentations, Friedman suggested that they meet at Lovelock and enter into a new arrangement. Taylor on the 25th day of March wrote Friedman that it would be impossible to go to Lovelock and suggested that Nenzel, Murrish and Poole be appointed a Committee to represent the stockholders and suggested that Poole come to Denver during the first week in April "**bringing exact data as to development work, assays, etc.**, so that he and Bancroft together could **work up a definite tonnage statement of present ore developed.**" That letter and that statement are significant and must carry throughout this case in connection with the testimony of the various witnesses as to what took place in the City of Denver in the latter part of March

and the 1st part of April, resulting in the contract of April 2nd. It is admitted that pursuant to this correspondence Poole, Nenzel and Murrish met Taylor in Denver on Sunday, March 30th, and were with him constantly until the following Wednesday, at which time the contract of April 2nd was signed. There is no dispute as to the facts that Poole, Nenzel and Murrish arrived in Denver in the forenoon on Sunday, March 30th, 1919; that they went to Mr. Taylor's office where they met him; that they were with Mr. Taylor Sunday; that on that day Taylor had with him Bancroft's original report with the photostat plate No. 5 attached thereto, which Taylor showed to them and which Mr. Poole took away with him to his hotel on Sunday evening; also that at the same time on Sunday Poole had with him and turned over to Taylor the mining map, and called Taylor's attention to the extensions and percentages shown thereon; that the lines and figures which appear on Plaintiff's Exhibit Y, showing the extensions and development of the work since Bancroft's original examination, were on that map at that time; that Poole, Nenzel and Murrish returned to Mr. Taylor's office and met him there on the following day, Monday, March 31st; that they were with Mr. Taylor all of that day and all of the next day and also on Wednesday until the agreement of April 2nd was signed in the afternoon of that day. There is, however, a sharp conflict in the testimony as to whether any representations as to tonnage or percentages of ore were made and as to what occurred at this meeting in Denver. It, therefore, become necessary to consider all the surrounding circumstances in weighing the evidence for the purpose of ascertaining the truth with reference to what actually took place on the various days during which they were in session at said meeting. Let us first hark back a bit to what transpired after Bancroft made his original exam-

ination of the mine and just what led up to and what the purpose of this meeting in Denver was. It will be remembered that when Bancroft made his original report he outlined a plan for the future development of the mine. This plan met with the approval of Poole and it was decided to carry on the development along the lines recommended by Bancroft. Shortly thereafter Nenzel started to send to Taylor, in the shape of telegrams and letters, reports containing positive statements as to the further development of the mine and the percentages of the ores. On March 7th Taylor requested Poole to mail to him weekly **"a definite statement of work accomplished, assays, size of ore shoots, etc."** Pursuant to this request Nenzel continued to send his reports to Taylor. After some correspondence, on March 25th, Taylor writes to Friedman requesting that Poole come to Denver during the first week in April, **"bringing exact data as to development work, assays, etc.,** so that he and Bancroft together could work up **a definite tonnage statement of present ore developed."** In response to this letter, Nenzel wrote that Poole and his engineering force had been rather busy at Rochester and that no accurate survey of mine development had been made since Mr. Bancroft was out there but that they expected to have their engineer out there within a week so as to check up the development work and no doubt Mr. Taylor would receive a report noting the changes that had been made since Mr. Bancroft completed the work of examination. The meeting in Denver followed for the purpose of entering into a new or modified arrangement and which resulted in the contract of April 2nd. The acts of the parties and this correspondence which preceded the meeting at Denver indicates beyond any question what information regarding the condition of the mine Taylor wanted them to produce at this meeting and what they in their correspondence



had given him to understand they would produce at that meeting. Taylor wanted exact data of development work, assays, size of ore shoots, etc., so as to be able to work up a definite tonnage statement of the present ore developed. That was what he wanted. That was what he required in order to be able intelligently to discuss the basis of a new contract. That is what he required in order to be able to go out and **"borrow"** money on a **"banking basis"** and that is what they agreed to produce for him at this meeting in Denver. Poole, Nenzel and Murrish, when they left for Denver, took with them the mining map which purported to show and which they represented did show the extent of the development of the mine since the date of Bancroft's first examination. The distances of the additional development were graphically shown on this map and this map bore upon its face figures showing the percentages of ore. They went to Denver equipped with this map in order to be able to supply to Taylor the information which he desired. Upon their arrival in Denver on Sunday they immediately went to Taylor's office. Taylor produced the original report of Bancroft with the photostat attached thereto and showed it to them. They in turn, as they say, turned over the mining map to Taylor and called his attention to the further development and percentages shown thereon. Taylor says that he asked Poole to take the photostat to his hotel that evening and to plot on same the distances and figures shown on the mining map, so as to make it correspond therewith and that when they returned to Taylor's office the next morning, Monday, Taylor asked Poole if he had transferred the lines and figures to the photostat, in reply to which Poole said that he had not had an opportunity to do so, whereupon, according to Taylor's story, Taylor suggested that they proceed at once to make the transfer, which suggestion was agreed to and the work



was done by Poole himself. Taylor says, and it is consistent with every fact and circumstance surrounding the transaction, that they then proceeded to make calculations as to the amount of tonnage based upon the lines and figures indicated on the mining map. That such calculations were made upon the same basis as used by Bancroft and as a result thereof it was found that the indicated tonnage was in excess of 60,000 tons of commercial ore. At this point Taylor says that Poole made the representation to him: "There are 60,000 tons—over 60,000 tons—of 1.75 per cent tungsten in this mine." Taylor's testimony is that after having made these calculations on Monday and after he had obtained this information they then proceeded on the day following to negotiate and discuss propositions and that finally he, relying upon the representations which had been made to him as to the condition of the mine, executed the contract of April 2nd and undertook the performance thereof. This, it seems to us, is the natural and logical course which a transaction of this character would take. Let us not forget that Poole, et al were there to **"borrow money,"** upon security and that Taylor was viewing the property not in the light of a speculation, but in the view of a banker. Now, as opposed to this story of Taylor, what do we find? In the first place, as to the letters and telegrams sent by Nenzel and Friedman prior to the meeting in Denver, and which contained misrepresentations as to the condition of the development of the mine, we find not one word from the lips of either Nenzel or Friedman in explanation or justification of the statements contained in these letters and telegrams. There was no way in which they could be explained and there was no way in which the statements contained in them could be justified, and they chose the course of refraining from testifying regarding them, and counsel for plaintiff was by objection of counsel for defendant prevented from cross-examining

Nenzel as to these matters. Next, we come to the meeting of the parties in Denver, and here the most important piece of evidence in the case makes its appearance—the mining map which Poole brought with him from Lovelock for the purpose of showing Taylor the condition of development of the mine. This document speaks volumes. On this map appeared lines and figures which by a recognized and simple process of calculation gave a result indicating a tonnage in excess of 60,000 tons of commercial ore. In other words, this map is a misrepresentation and a fraud and it bears on its face the evidence which corroborates Taylor's story as to the alleged misrepresentations regarding tonnage and percentage of ore in sight at that time. The defendants realizing the weight of this map as a piece of evidence in this case seek to avoid its effect in various ways as follows: Poole, Nenzel and Murrish would have the Court believe the unbelievable, that after Poole turned over this mining map to Taylor at his office on Sunday upon their arrival in Denver that no further reference was made to said map; no discussions were had as to the development of the mine; no mention whatsoever was made by them of tonnage or percentages of ore from that time until they and Taylor had agreed upon the terms of the contract of April 2nd, and while it was being typewritten; and that then, while the contract was in course of preparation the mining map was produced; the lines and figures transferred to the photostat and the calculations made by Poole and Taylor, and even then they claim that there was no discussion, no representations as to tonnages or percentages of ore. Nenzel testifies that there was simply a general discussion at that time between Poole and Taylor. These defendants, and especially Mr. Murrish, a lawyer, being fully aware of the importance, as a matter of law, of these representations as to tonnage and percentages of ore as constituting an inducement for Taylor entering into the contract of

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April 2d, chose in their testimony to fix the time when the contract was being typewritten and after they had agreed to its terms as the time when the transfers of lines and figures from the mining map to the photostat and calculations were made by Poole and Taylor. This was to avoid its effect as an inducing cause for Taylor's making this contract.

Is it credible that three men, representing a corporation in financial difficulties, pursuant to request for exact data, assays, size of ore shoots, etc., on which to work out a definite tonnage statement of present ore developed, desiring to obtain a loan, should travel from Lovelock to Denver, spend practically four days, or over three full days, and never mention whether there was one ton or sixty thousand tons in the mine; whether the ore ran one-tenth of one per cent or ten per cent in value of tungsten? The Court, in weighing the evidence, will take judicial notice of the standard of prudent business methods (23 Corpus Juris 62). We cannot conceive how anyone could undertake to obtain a loan, especially of the magnitude of the one which was sought in this instance, without first having at hand two indispensable factors, namely the amount sought to be borrowed and the value of the property offered as security for the loan. This is particularly true in this case, as it is admitted by all of the witnesses that Taylor proposed to raise the money necessary to wipe out the indebtedness of the company by effecting a loan upon a banking basis; it is common knowledge that banks do not make loans without first inquiring as to how much the party wants to borrow and what security he has to offer for it. It is also well known that the only way to determine the value of a mine with any degree of certainty is by examining it and finding out the quantity and character of ore in sight in the mine. Is it the customary or usual way in which business men, wanting a loan, desiring to



extricate themselves from financial difficulties, asking for a loan and giving security and the security being a mine, act under such circumstances? Do business men like Mr. Taylor, about to undertake an enterprise of this kind, about to obtain a loan upon a banking basis, negotiate for three days with men who are experts and familiar with the conditions of development of the mine—the security for the loan, and never once ask or inquire as to the developments in the mine, the tonnage in it or the percentage or value of the ores in it? Or do they, as Taylor says, proceed at once to find out how much of a loan is required and the nature character and value of security which is to be offered? We submit that the story is absolutely unreasonable and beyond comprehension and that it is not worthy of belief or of any credence.

The Trial Court in its opinion (p. 1429), in referring to the alleged misrepresentation as to 60,000 tons of ore of an average of 1.75 per cent tungstic acid, says:

“Taylor swears that Poole made the statement but Poole denies it, and in his denial is supported by Murrish and Nenzel. They go even further and say that prior to the time when they had agreed on the terms to be incorporated in the new agreement no statement had been made as to the tonnage of the mine. **This seems unreasonable when we reflect that the selling price of a mining property depends so much on the quantity of commercial ore in sight.**”

It will be seen therefrom that the Trial Court could not bring itself to believe the testimony of Poole, **corroborated** as it was by Nenzel and Murrish, all of whom were so anxious to get away from the charge of misrepresentation as to tonnage and percentage of ore that they shied at the mention of the words “tonnage” and “percentage.” These words were taboo and the denials of these three witnesses in response to the categorical ques-



tions, put to them by counsel, as to whether either of them had made any representations as to tonnage or percentage, sound like the notes of a trained chorus.

When the terms of the contract has been agreed upon, and it was being typed, then according to the defendants' testimony, when there could be no question of inducement, they begin to discuss the vital question of tonnage in the mine and the value of the ore. Mindful however, of the fact that the mining map had been called to Taylor's attention immediately upon their arrival and mindful of the fact that the mining map itself was a misrepresentation as to the condition of the development of the mine, and that, the mining map itself might have been relied upon by Mr. Taylor and induced him to enter into this contract, these defendants sought other avenues of escape, and by their testimony sought to relieve themselves from responsibility for the representations appearing thereon. Accordingly, Mr. Poole testifies that at the time of making the transfers from the mining map to the photostat, and the calculations: "I had my mine map, Exhibit Y, which had been made by Mr. Huntington just before we came; he had put on these percentages and he had put on the graphic in pencil showing the extension of development work since Bancroft's report; and with this Mr. Taylor and I proceeded to put upon the photostat map, part of it in my handwriting and part of it in Taylor's, the extensions of work which had been made in the mine since Bancroft's first report (p. ——. Part of it in his handwriting and part of it in Mr. Taylor's. Mr. Taylor would do part of the work and he would do part of it. Poole said:

"I told him those figures were merely estimates which had been placed on that map by John Huntington, who was mining engineer who had brought this map up to date, and that Mr. Huntington had gotten that information from Mr. Morrin, who was the sup-

erintendent, and Mr. Morrin had arrived at those values by panning in the mine; and he knew, as well as I did, that panning was a very unreliable way of arriving at the value of ore." (p. 498-499).

In other words, Poole, Nenzel and Murrish attempt to relieve themselves from and shift to Huntington and Morrin the responsibility for the misrepresentations shown on the mining map, but here in this instance again we find in the testimony not one word from Huntington or Morrin, although they were available, offering any explanation or justification for the misrepresentations appearing on the map. They undoubtedly could have stated how and under whose direction the extensions and figures were placed on the map and from what source they were obtained, but defendants' counsel preferred to have them refrain from testifying on this subject just as it was deemed advisable to have Nenzel and Friedman refrain from testifying as to the letters and telegrams which they sent and which contained the other misrepresentation as to the development of the mine. This should be taken into consideration by the Court in weighing the evidence (23 Corpus Juris 40). It is also well settled that positive testimony of a single witness should prevail over the strictly negative testimony of any number of witnesses (23 Corpus Juris 45). Poole would have the Court believe that he told Taylor that these figures were unreliable and that Taylor, although demanding exact data and definite tonnage figures, went ahead and executed the contract of April 2nd. He not only executed and signed his name to it, but spent his money in trying to put it through. When the Court comes to an examination of Exhibit Y, it will also find that the lines on the map are almost identical with and take in practically the same block of ground which is taken in by Mr. Taylor's additions to Plate 5 (Plff's Ex. 15). Poole also testified that Taylor told him that this loan was to be effected upon

a banking basis; that he was going to do business with some New York Trust Company or Bank on a banking basis; and yet Mr. Poole states that Taylor undertook this enterprise in the face of the fact that Poole told him, "You can depend on the amount of work that has been done in the mine, because Huntington is a good surveyor and reliable, but you must not depend upon the values." It is a well known fact that work in a mine does not mean anything unless there are some values and tonnage in it.

Mr. Nenzel's version of this conversation does not corroborate Poole in this regard but corroborates Taylor and shows that Taylor relied upon the value shown on the map and on Poole. Nenzel states that Poole told Taylor that he must not take the values as being reliable because they were made by Morrin from pannings and that Mr. Taylor said, "Well, Poole, I am depending upon you, and if there is any mistake about them you are the one that will suffer."—"If there is anything wrong with it you will be the one to suffer, because I am depending on you." Compare this with Taylor's story that after calculations and the representations as to the tonnage and percentage of the ore had been made on the Monday, which resulted in the execution of the contract of April 2nd "Exhibit C," they then proceeded during the next two days to carry on negotiations.

We submit that Taylor's story must be taken as the true statement of facts as to what occurred between the parties in Denver and that the testimony of Poole, Nenzel and Murrish is incredible and unworthy of belief.

Poole testified that defendants' exhibit "B" was produced by Taylor on Tuesday and formed the basis of their negotiations which resulted in their contract of April 2nd. (pp. 480, 481, 482).

On direct examination he further testified as follows:

"Q: I call your attention to a portion of this exhibit reading as follows: 'In order to make investment safe only



necessary to show at eight dollar market, 35,400 tons of ore; ten dollar, 25,500 tons of ore.' Did you on that occasion hear anything said upon that subject by Mr. Taylor?

"A. Yes, I did.

"Q. What in substance, did he say on that occasion?

"A. He said that he contemplated if he got such a deal as is here proposed from us, that he would go East, and try and interest some trust company, and he felt that 35,000 on a ten dollar basis would put that mine on a **banking basis**—on an eight dollar basis—; and on a ten dollar basis he felt that 25,000 tons would put the mine on a **banking basis**.' (p. 480).

When pressed on cross examination as to where Taylor got the figures of 35,000 tons, he said he thought it was "a figment of imagination." (p. 575).

Again pressed on cross examination he said:

"Mr. Taylor knew approximately what the debts were; he knew approximately the operating costs; he assumed a certain figure for the price of tungsten, and then he worked out the proper number of tons which would be necessary at that ten dollar market in order to make a **safe investment as against the debts**." (pp. 575-576).

And again on cross examination he said:

"Q. And at that time you had made no representations to him, and you had never discussed with him the tonnage of the mine?

A. I certainly had not.

Q. And you saw these figures at that time, did you not?

A. Yes.

Q. And on what kind of a basis did you say Mr. Taylor was expecting to deal with others?

A. He said that if there was that quantity in the mine, the mine would be on a **banking basis**.

Q. And didn't Mr. Taylor say that he wanted the prop-



osition upon a banking basis?

A. He did not.

Q. Did he say who he was going to interest in this property?

A. He said he hoped to interest some New York Trust Company on a banking basis.

Q. On a banking basis?

A. Yes.

Q. And yet never at any time did he discuss with you, nor did you tell him what the tonnage of ore or values in that mine were?

A. I did not. (pp. 576-577).

Taylor's story is further corroborated and borne out by what transpired subsequent to their meeting in Denver.

## RELIANCE—TAYLOR'S EFFORTS TO OBTAIN LOAN

According to Taylor, after the contract of April 2nd was signed, he started in to try to raise the money necessary to pay off the indebtedness. He first talked to several people in Denver, among them Mr. Henry James of the Denver National Bank; Henry Swan of Bright, Swan & Company, brokers; Mr. Moore of Dwight & Company, brokers; and particularly to Mr. David R. C. Brown, and his father, Mr. Frank M. Taylor. Mr. Brown and Mr. Taylor both said they would put up some money and then Mr. Taylor decided he would have to go East to raise the money (p. 60). He arranged with Poole to visit the mine about April 24th or 25th in order that he might be able to state in presenting the proposition that he had actually seen the mine. Mr. Taylor is not a mining engineer; never worked in a mine and never did any sampling, and never had anything to do with the active operations or examination of any mine for the purpose of testing its value (p. 62). On the other hand, Mr. Poole is a mining engineer; had long been connected

with the management and operation of this mine and was an expert in testing the value of a mine, so that Taylor considered that he had expert advice from the statements of Mr. Poole, in whom he had implicit confidence (p. 114). After this visit to the mine, Taylor left for New York to raise the necessary money, arriving there about April 30th. On the train he met Mr. Thane and they together prepared a prospectus which was to be used to submit with Mr. Bancroft's report to various people in New York and in the East who Taylor thought might be interested. He talked to a good many people in New York, among them Mr. Dodd and Mr. Buckner, Vice-President and President, respectively, of the New York Trust Company; Mr. Edwin Holter, a general mining promoter; Chisholm & Chapman, brokers; Mr. Carl Ilers; Mr. W. S. Morse, and Mr. Prosser of the American Smelting & Refining Company (p. 63). Also while in New York Taylor arranged with Mr. Jackson, his attorney, to go out to Lovelock the end of May or beginning of June for the final reports, auditors' reports, and preliminary examination as to titles. While in New York he also made arrangements to have Mr. Bancroft make a further examination of the mine. This took place about the middle of May (p. 65). Taylor then went to York, Pa., where he talked with one or two other persons about the proposition and then went West to Denver, expecting to meet Mr. Bancroft there after he had completed the examination of the mine. Before going West, however, Taylor arranged for the necessary funds and upon his arrival in Denver made further definite arrangements with reference to getting moneys for carrying out this contract. (p. 66) He arranged with Mr. F. M. Taylor for \$25,000, which was paid, and also arranged with Mr. David R. C. Brown for \$10,000, which was held subject to his use whenever he wanted it and needed it (p. 67). In passing upon the admissibility of the evidence in this connection, the

Court, in referring to Taylor's testimony, said:

"He says that Mr. Taylor paid him \$25,000. I think that may stand. He says also that Mr. Brown's amount was \$10,000 which was subject to the witness' order. I think those facts may remain."

Taylor had cash for Mr. Taylor's \$25,000 and he had sufficient cash in the bank which, added to certain bonds which he had in his possession furnished more than enough money to take care of the complete indebtedness of the company (p. 68). He had cash and immediately available about \$125,000; he had in bonds salable on the New York Stock Exchange in his own possession \$50,000 at least more; he had arranged with the New York Trust to borrow \$40,000, signed his note for it and given security, the money to be deposited upon his telegraphic order (pp. 99-100). He had already taken care of \$70,000 to \$75,000 of the indebtedness, so that the indebtedness of the Mining Company at that time was between \$150,000 to \$175,000 (p 69). The Court, in referring to this testimony, said:

"He states in the first place, 'I had \$125,000 in cash in bank;' I can't throw that out as hearsay. He says he had bonds of \$50,000 more; I can't throw that out as hearsay. \* \* \*"

This \$125,000 which he had in the bank, and the \$50,000 of bonds were both available for the purpose of carrying out the contract (p. 70). Taylor testified that Mr. F. M. Taylor gave him \$25,000, and said:

"If you decide to go ahead with this deal and take this stock, I will take \$25,000 of it. Mr. Brown told me the same thing, only he did not give me the money; he said, 'if you need the money you may call on it.'" (pp. 71-72).

That was in Denver. Taylor later telegraphed Mr. Jackson, his attorney, to start west from New York and met



Mr. Jackson in Lovelock on Saturday, May 31st. In the meantime, while Jackson was enroute, Taylor got the first assays on Mr. Bancroft's subsequent examination which had just been made, Mr. Bancroft getting to Denver about that time. These reports were later, about May 27th, confirmed by certificates. After receiving these certificates Taylor left Denver and went to Lovelock where, as stated, he met Mr. Jackson on Saturday, May 31st. After meeting Mr. Jackson they met Poole on the street and told him what Mr. Bancroft's report was and asked him if he wished to verify it, to which he replied that he would like to. Taylor says that Poole thereupon stated that it was impossible, that Bancroft must have been mistaken, whereupon Taylor and Jackson suggested that he had better check it up himself and suggested that they go up to the mine that afternoon. Nenzel made arrangements by telephone and Mr. Jackson, Poole and Taylor went up to the mine that afternoon (p. 75). They discussed conditions with Mr. Poole. Taylor testified Mr. Poole said that if Mr. Bancroft's report was right that the foreman at the mine had lied to him, giving him wrong information and said to Taylor:

“ ‘When we get up there I wish you would take Mr. Jackson, take him away from the office, as I want to spend two hours with the foreman and if I find that he has given me wrong information I will knock his block off,’ or something of the kind.”

Jackson and Taylor spent the afternoon around the mill and about five o'clock they got back and had supper and Mr. Poole went down the mine, taking Mr. Jackson and the foreman, Mr. Morrin, with him (p. 76). Taylor saw them about two hours later when they came out of the mine and a conversation followed between Jackson, Poole and Taylor which Taylor relates as follows:

“As soon as they came into the office I asked Mr. Poole if Mr. Bancroft was right; he replied, ‘Bancroft



is right; the foreman lied to me.' " (p. 77).

Mr. Goodin met Taylor and Jackson in the hotel at Lovelock that evening. They told him that instead of 60,000 tons developed, or over, there was less than 18,000 tons developed, that is, ore averaging 1.76 per cent or 1.75 per cent W03. Mr. Goodin was very much surprised. They told him that Poole had been up to the mine and exactly what had happened; that Poole had gone down into the mine and had come back and said that Bancroft's report was right.

## WHAT OCCURRED AT MEETING IN CALIFORNIA

Early Sunday morning Taylor and Jackson left for San Francisco where during the following week they met Mr. Murrish, Mr. Jones, Mr. Poole and Mr. Nenzel (p. 78). They met them at various times during that week, mostly at the Palace Hotel; also at Mr. Thane's and Mr. Bayless' office. Taylor and Jackson arrived in San Francisco Sunday afternoon. On Monday morning they met Mr. Murrish, Mr. Jones, Mr. Nenzel and Mr. Poole at Mr. Bayless' office. At this meeting Taylor says:

"Mr. Jackson did the talking for me as my attorney. Mr. Jackson stated to them,—gave them a general resume of the results of the examination, and asked them in the beginning to correct him if he made any misstatements; he then proceeded and said this mine was represented to contain 60,000 tons of commercial ore; the report showed that it contained less than 20,000 tons; 'my client raised money to make these loans, representing that it was—the mine had the 60,000 tons blocked out; he could not very well put his money or his friends' money into a mine that has 20,000 tons blocked out, when it was obtained to go through with one that had 60,000; we are willing, however, to rearrange the loan on a sum basis, by which my client is protected, and suggest the following proposition; to put up about—' " (p. 80).

That offer made by Jackson in Taylor's behalf was afterwards incorporated into a writing by Jackson (p. 82) and was submitted to Murrish, Poole and Nenzel (p. 83). On Friday evening there were present at Mr. Bayless' office Poole, Nenzel, Taylor, Jackson and Bayless. Poole and Nenzel at that meeting said:

"Your proposition is satisfactory; Mr. Murrish does not care to make any changes in it; it will be submitted to the creditors tomorrow morning for their approval; we will ask them to accept it; we are convinced that is the best proposition that can be done, that we can get, and under the circumstances it is perfectly fair. We thank you for making it." (p. 86)

### TAYLOR READY, WILLING AND ABLE TO PERFORM

At that time, Mr. Taylor testifies, he was ready, able and willing to perform the conditions which were outlined in that paper (p. 87). Mr. F. M. Taylor gave him the \$25,000; Brown, instead of giving him the \$10,000 said, "You can have it whenever you need it." Taylor had \$80,000 in cash in the New York Trust Company of his own property on the 31st day of May or the 1st of June. He also had an arrangement with the New York Trust Company to borrow \$40,000, subject to his call; the notes were signed; the security attached; the notes were in the possession of the New York Trust Company; they were to be deposited to his credit any time he telegraphed them to do so (p. 99). He also had various other stocks which were salable on the New York Stock Exchange any moment and could have been converted into probably \$90,000 cash, in addition to the \$80,000 cash, and \$40,000 loan arranged.

### CORROBORATED BY BAYLESS

Mr. W. S. Bayless, who is a lawyer in San Francisco and who was representing Mr. Taylor in San Francisco in ref-

erence to matters concerning the title of this property, corroborates Mr. Taylor's statements as to what occurred in San Francisco at the meeting at his office on Monday morning, June 2nd. He testifies that Mr. Jackson made a statement, the substance of which was this:

"Mr. Jackson announced to those gentlemen mentioned that he represented Mr. Taylor; that he had come from New York and had met Mr. Taylor for the purpose of closing this up for Mr. Taylor; that in view of the fact that the mine was not as represented, it was impossible for Mr. Taylor to take up his option; however, Mr. Taylor was willing to take over the property on some different terms, that is, he would like to modify the option in some equitable way, and would like to discuss that proposition with them; he further mentioned that Mr. Taylor had performed all the services he had said he would perform in order to receive the compensation allowed him in this option, and was there for the purpose of making some different arrangement if it could be agreed upon." (p. 128).

He states further that according to his recollection Mr. Taylor was willing to advance about \$75,000 in place of \$160,000 which the debts amounted to, the \$75,000 to be used to pay the company's obligations under \$500, and to be pro rated among the creditors whose claims exceeded that amount; that he was also willing to advance about \$10,000 to be used as working capital, and for that he expected to receive 62 per cent. of the common stock of the company, to be formed to operate the mine, and to have a lien on the ore blocked out as security for these advances; also the right to operate the mill of the Products Company during the period this arrangement was in force; also, that if that arrangement met with the approval of the company, the mine was to be operated and if the operations developed sufficient commercial ore to justify it, Taylor would advance them the further sum of about \$65,000., which would be used then to pay off all the creditors (p. 130). Bayless



states (p. 130):

“Mr. Poole, I think, was the spokesman and from time to time as Mr. Jackson proceeded with the statement of fact, he would say, ‘now if I am wrong I wish you gentlemen would correct me,’ particularly regarding these representations or misrepresentations; and Mr. Jackson would say, ‘Well, now, is not that so Mr. Poole,’ and on a number of occasions Mr. Poole would say, ‘Yes, that is so,’ and he would speak to the other men present and ask them if that wasn’t so, and they never directly replied except by nodding their heads to its being so.”

Bayless says they had frequent conferences for the purpose of discussing the new arrangement and finally Mr. Jackson drew up a contract. The terms were verbally agreed upon about Wednesday. Then there was the question of reducing the verbal agreement to writing. Some suggested Mr. Murrish draw up the contract; he suggested Bayless, and Bayless suggested Jackson. Finally everybody was willing for Mr. Jackson to draw the contract, which he did, and deliver the contract to one of these gentlemen some time on Friday. They looked over the contract and it was agreed to meet in Mr. Bayless’ office Friday evening. Jackson, Taylor, Poole and Nenzel met Bayless at his office Friday evening. Jackson asked Poole what he thought of the contract. Mr. Poole said he had no changes to make, that it was a hard bargain from their point of view, but in view of the existing conditions they could do no better; they were satisfied with the contract, had no modifications or suggestions to offer. Mr. Jackson told them not to hesitate to suggest changes because the draft he had submitted was merely a tentative draft and that he himself had a number of suggestions that he would like to make. Poole said:

“That is all right. We will make the contract as it



stands, provided our creditors will permit us to sign it."

He said:

"We have called a meeting of the creditors, as you know; the creditors will meet on Saturday morning, tomorrow morning. We will ask the creditors to approve of this contract; if they do, we will sign it up."

Bayless' recollection is that they then all shook hands and dispersed to meet following the creditors' meeting the next day. Taylor and Jackson were not invited to be present at the creditors' meeting, but Bayless was present, not as a representative of Mr. Taylor, but as the representative of one of the creditors, a Mr. Pettigrew. Poole, Nenzel, Murrish and Goodin were all present at the creditors' meeting. In response to the question as to whether Poole, Murrish, Nenzel or Goodin asked the creditors to enter into this contract or approve it, Bayless testified they asked the creditors, in substance, to extend payment of their indebtedness for their various claims, saying that if the creditors would give them time, they could work the mine, pay off all the claims in full, and they would not be under the necessity of making this contract with Mr. Taylor (p. 133).

## TESTIMONY OF BANCROFT

Upon the examination of Mr. Howland Bancroft, attorneys for defendants admitted the ability, character and expert standing of the witness. He testified that he was a mining geologist, by training, and valuer and examiner of mining property and metalliferous deposits, by experience. (pp. 228-229). He identified Plaintiff's Exhibit 15 as the original report made by him and said that the examination was made between the 17th and the 27th of January, 1919 (p. 233). He stated that it was a correct

statement of the condition of the mine at that time (p. 235). In explanation of the photostat, Bancroft states that the samples are all indicated by arrows. The arrow points to the point from which the sample was taken. The first figure below the arrow-head is the width of the sample taken; the second figure is the percentage of tungstic trioxide; and that is the same throughout the report. The blocks of ore which are here designated, are included between these dotted lines; (p. 237) the material within these blocks is commercial ore, which has been valued and the tabulation which occurs in this report, the method of calculation is the method which is followed in good practice on such an ore body. Mr. Bancroft testified that after he made this report, Exhibit 15, he made another further examination of the mine on about May 16th or 17th, which occupied about a week (p. 238). The condition of the mine, as at his second report, is illustrated by plate 5A, which shows extent of all the ore bodies and assay values as at his examination of May (p. 240). While making his first examination in January, Bancroft discussed the development plan of the mine with Mr. Poole and Mr. Morrin. The development program proposed is indicated in his report on page 10 thereof, which contemplated sinking the shaft an additional 360 feet, continuing level No. 2, driving levels 3, 4, 5 and 6 380 feet to the Southwest and 250 feet to the Northwest, and connecting these levels by raises (pp. 248-49).

Taylor testifies (p. 400) that he made the statement in the prospectus that "the result is now an assured minimum of 43,000 tons of ore," instead of stating that there were 60,000 tons as he believed, because his calculations at that time that 43,000 tons was all the ore that was necessary to have in any tungsten mine subject to the costs it would take to get it out to protect a loan of \$150,000 or \$160,000 and he wanted to be conservative so that in case any examination was made by any buyers he preferred to have them

be agreeably surprised when they saw the mine, instead of checking up another way and be disappointed, and 43,000 tons was all that was necessary to secure the loan. Mr. Taylor's story as to the representations made to him in regard to the tonnage and development of the mine and as to what occurred at Lovelock and at the mine on May 31st and as to the following meetings of the parties in San Francisco, is fully corroborated by the testimony of Mr. Jackson.

Mr. Jackson in substance testified as follows: that he is a practicing lawyer in the City of New York; that Mr. Taylor consulted him in May, 1919, about the contracts involved in this suit and in a general way discussed what he was doing to fulfill his undertaking (p. 411); that they had a preliminary discussion after he was employed professionally by Mr. Taylor to go out to Nevada and participate in the reorganization of the existing company or in the organization of a new company, as might seem best; look into the titles and the usual matters connected with such issues of stock; attend to the issuing of the stock and generally to see that the whole situation was in order from the point of view of a New York business man or investor. Mr. Taylor agreed to pay his firm a fee of \$5,000, and expenses for the trip. This was about May 5th or 6th (p. 412). That on May 14th a telegram was dictated in his office by a Mr. Thane requesting Bancroft to make an examination of the mine; that his arrangement with Taylor was made prior to that time, subject, however, to the approval of Mr. Thane, which was obtained on the 14th day of May. At that time Mr. Thane stated that he would like to have Mr. Bayless also assist in the examination and do some preliminary work. Accordingly, telegrams were sent both to Mr. Bayless and to Mr. Bancroft; \$2500 of said fee has been paid to him and that owing to the unfortunate outcome of the affair he had no intention of asking for any more (p. 413). He left New York intending to go directly



to San Francisco and there take up with Mr. Bayless the work he had done, on the understanding that all of the corporate records and papers would be in San Francisco. Enroute he received a telegram from Mr. Taylor to stop at Lovelock and go into matters there, which he did, and arrived at Lovelock on Thursday, May 29th. Mr. Taylor did not arrive there until the following Saturday, May 31st. In the meantime, Mr. Jackson met Nenzel, Murrish and Jones at the office of the company. Mr. Poole did not arrive there until Saturday morning (p. 414). While in Lovelock awaiting the arrival of Taylor and Poole, Mr. Jackson examined the corporation records and contracts of the company; discussed at considerable length certain features of the situation with Mr. Murrish; checked the corporate activities and corporate history of the three companies with the requirements of the law of Nevada and also certain questions which then presented themselves to him with Mr. Murrish at length. They had a number of conversations with regard to the legal aspects of the situation. He also ascertained the organization of the company; its officers and directors, and one or two other questions were taken up also, such as the survey. These conversations took place on Thursday and Friday, the 29th and 30th of May. He did not discuss at any great length the proposed reorganization of the present company at that time (p. 415). On Saturday, May 31st, he, Taylor and Poole left Lovelock and went up to the mine (p. 416). While in Lovelock, before going to the mine, Jackson and Taylor had a conversation with Poole. Mr. Jackson testifies:

“The conversation in Lovelock, when Mr. Poole, Mr. Taylor and myself met, the discussion as I recollect was on the sidewalk; we walked up and down for quite a while, discussing the situation. Mr. Taylor said first to Mr. Poole that Mr. Bancroft had reported something less than 20,000 tons of commercial ore in



the mine; Mr. Taylor was very much upset because he had started for New ork sometime ago prepared to close the deal, and Mr. Bancroft's report had come along and he was extremely disappointed.

"This is what Mr. Taylor said. Mr. Poole said he, too, was very much surprised; I can't say exactly his words, don't pretend to, but the substance of it was that he could hardly believe it. We then agreed the best thing to do was to go up to the mine and see what was the best thing to be done. We took the train and went up to the mine; on the railroad this conversation was discussed with some detail as to various parts in the mine; I am not sufficiently familiar with mining to have that impressed on my mind at all." (pp. 417-418.)

After they reached the mine Mr. Jackson went down in the mine with Mr. Poole and Mr. Morrin, the superintendent, and understood from Mr. Poole that he had been taken through the whole mine. While down in the mine Poole and Morrin went through some operation called panning. They took quite a good many pannings and they were down in the mine between two and three hours (417-418). They met Mr. Taylor just outside of the mine and went immediately into the mine office, Mr. Taylor came up and said, "Well, what about it?" Mr. Poole said, "Bancroft is right; the foreman lied to me." Shortly after that they took the train back to Lovelock. Mr. Jackson testifies:

"We got back to Lovelock late in the evening and we met Mr. Goodin at a hotel. I think it is the Big Meadows Hotel, and had a conversation with him. The situation was stated to him just as Mr. Taylor had told it to Mr. Poole with regard to representations made in April, that there were 60,000 tons of ore; that Bancroft now reported only 20,000 tons of commercial ore; that Mr. Taylor had proceeded to raise this money on the understanding that this was in effect a banking proposition and the value of the ore disclosed would secure the money advanced; that under the circumstances as they now existed, according to Mr. Bancroft's report, Mr. Taylor could not put his money in that business in any other way than

on the basis on which it had been raised.

"Mr. Goodin used some rather strong language, and he seemed considerably upset, too; as I recollect, he said something to the effect that he had been more or less fooled, too." (p. 419.)

Pursuant to arrangement made in the morning, Poole, Nenzel, Murrish, Taylor and Jackson planned to go to San Francisco that night. Taylor and Jackson wanted to go to San Francisco because they felt that it would be possible, with the co-operation of creditors, to make a deal on substantially the same lines of the April 2nd contract with the advances pro rated to the condition of the mine as disclosed by Mr. Bancroft. There was nothing more that could be done in Lovelock and it seemed that San Francisco was a better place to negotiate (p. 420). Mr. Poole had been told the situation and he had been told of course under such conditions, as they were then, Mr. Taylor could not pay over the full \$150,000. That was discussed on the way back from the mine to Lovelock. As to the proposition of advancing money to the company which would pay a substantial dividend to the creditors, and which would be secured by the amount of ore actually blocked out, Mr. Jackson says that he is not sure whether on the train the exact amount was discussed or not, but thinks it was, and thinks the amount then mentioned was \$75,000. The parties then went on to San Francisco and arrived there Sunday afternoon. The first conference was the following day, Monday, which was June 2nd. The meeting was at the office of Mr. Bayless and those present at this first conference were Taylor, Bayless, Poole, Nenzel, Jones and Murrish (p. 422). At that conference Jackson acted as the spokesman for Mr. Taylor and when they were all in Bayless' office he said:

"That in view of the developments in connection with the mine it seemed to me in order to state the full history of the case and the full facts of the situation, in order to see if some fair deal could not be



reached; and in order to be sure that we were proceeding on common ground I wanted to state to the gentlemen who were representing the mine and the stockholders what my understanding of the facts was; and I said that I would like to be corrected if I went wrong at any time in their judgment during the course of my statement. With that preliminary, I went back, as I recollect now, to the January contracts; I said that Mr. Taylor had then made two contracts, one with the stockholders and one with the company; the contract with the company provided for the advance of money against concentrates for the purpose of more or less financing the company at a time when the tungsten market was bad and permitting them to gradually liquidate some debts and develop the property; that as a part consideration for this contract stockholders had given to Mr. Taylor an option to buy the mine for \$500,000.

"It was not all the stock. It was so much a share which in the aggregate would fix the value of the stock at \$500,000; there were a few shares these gentlemen didn't pretend to control; following the making of these contracts Mr. Taylor had found it impossible to interest people in the purchase of this stock at the price and accordingly they had met in his office in Denver. There, after considerable negotiation, a new contract, dated April 2nd, had been entered into; prior to executing that contract, and as a reason for entering into it, Mr. Poole had represented to Mr. Taylor that the mine contained 60,000 tons of commercial ore; it now developed that that representation was a mistake; Mr. Bancroft had just examined the mine, had reported that there were but 20,000 tons of commercial ore in the mine; that under those circumstances, while Mr. Taylor had come West from New York with the money to close the deal, and expected to close it, he now could not put into this company's treasury to pay its debt, or for any other purpose, the money which he had in part raised himself and in part from his friends on one basis, whereas there had now developed an entirely different condition of affairs. I continued to say that, nevertheless, in spite of this situation, Mr. Taylor was very much interested in this mine, and that he would like to work out with them an equitable and fair deal, which would be substantially on the same basis as even more fa-

avorable to the company than the basis set forth in the April contract. I was authorized to offer to the company an advance of \$75,000, to be secured by concentrates and in addition to that—I am not sure whether it was in the first interview but certainly was later, Mr. Taylor authorized an additional advance of \$10,000 to be used as working capital. I also said that some arrangements would have to be made with the creditors so that to the extent that this \$75,000 did not pay them all they would not interfere with Mr. Taylor's security; that he was entitled to work his money out of the ore blocked out as certified by Mr. Bancroft; and that when an additional 20,000 tons of ore were blocked out he would advance the balance of the money to pay off the rest of the creditors. The suggestion then made was that all creditors whose claims were \$500 or less be paid off in full, and that the remaining creditors be paid pro rata. It figured at dividends, as I recollect, of about 45 per cent to all of the other creditors and excluded Mr. Taylor, who was a secured creditor. On Tuesday I think we had no meeting. The matters were under consideration; and on Wednesday we had one or two meetings; there were various details discussed of one kind or another. I recollect that among the matters discussed was the personnel of the board of directors and the officers of the company.

My recollection is—I am certain as to the fact, but could not swear whether it was Wednesday or Thursday morning, we came to an agreement that a new company was to be organized and to issue preferred stock—not preferred stock, but to issue bonds for the amount of its claims. Mr. Taylor agreed to buy \$85,000 worth of these bonds; \$75,000 was to be applied in payment of the claims, and \$10,000 was to remain as working capital; the personnel of the company, of the directors and managers, was agreed upon; my recollection is that Mr. Taylor was to be president; Mr. Thane was to be the engineer or supervisor in charge of operations—consulting engineer; and Mr. Poole was to be in charge of operations at the mine; I think one director was to be agreed upon by the creditors and the fourth I have forgotten. I don't remember who it was. That, in outline, is the proposition; it was agreed upon and accepted by all concerned, and then the discussion came up as to who should em-



body this in writing; it was suggested variously, Mr. Poole, Mr. Murrish or myself should draw the contract. Finally it was put up to me and I said I would with the understanding that what I prepared would be a tentative draft, subject to revision; it seems to me we were all agreed on the substance of the proposal and the nature of Mr. Taylor's security, and I would prepare a draft on that understanding; and from that point of view; I went back to my room at the hotel, wrote it out in long hand, then gave it to the hotel stenographer, who wrote it out, and it was put, I think two copies, certainly one copy and I think two copies, in the mail box of the representatives of the Nevada Company or the stockholders of the Nevada Humboldt Company. According to the appointment previously made, we met in Mr. Bayless' office at 7:30 on Friday night to discuss this contract and make any revisions that seemed advisable; those present at the time were Mr. Poole and Mr. Nenzel. Mr. Murrish and Mr. Jones were not present. Mr. Poole said that Mr. Murrish did not care to make any changes in the contract; that it was satisfactory; that they would submit it to the creditors at a meeting which they called for tomorrow and would recommend and urge its acceptance. That was as satisfactory as we could hope or expect from any point of view and the meeting then adjourned. Following it the creditors' meeting was held; Mr. Taylor and I were not permitted to attend until the very end of the meeting; it was just before lunch time that we went over to the meeting at the office of some engineers, Freitag & Ainsworth, I think it was. We found it impossible to do anything with the gentlemen present for several reasons; in the first place—I am not permitted to say the reasons I suppose. I think that about concludes.

Mr. Jackson further testifies at page 428 as to the interview on Monday, June 2nd, that

“during the course of the conversation as I made statements or concluded a statement of fact, in regard to the history of this matter, I would ask the gentlemen from time to time whether that was correct; I would say, ‘Is that correct?’ and at no time during that meeting was a statement contradicted; and in several instances Mr. Poole acquiesced by nodding his head or

saying, 'Yes, that is so.' That is particularly true, I would like to say, with regard to the representation, as to the quantity of commercial ore, in the mine, because I had that especially in my mind when I made the statement to see whether it was admitted or whether it was not admitted; I have a very distinct recollection of it."

On cross-examination, no questions were asked of Mr. Jackson regarding the story told by him as to what transpired either at the meetings in Lovelock at the mine or in San Francisco, and his testimony stands unshaken. His testimony as to the admissions regarding the representations as to tonnage and commercial ore is clear and positive, and, we submit, entitled to a great deal of weight.

### POOLE'S TESTIMONY

Poole testifies that he met Taylor and Jackson in the month of May and that he, Jackson and Morrin went down in the mine; that they visited the third level North and the shaft all the way down, particularly the part of the shaft between the fourth and fifth levels, and not any other portion of the mine that he recalls, but that he may have gone into the third level South and they may have gone up on the second level South, where there was some water; but they were visiting particularly the shaft between the fourth and fifth levels and the third level North from the main shaft; that he and Morrin did considerable panning in the presence of Mr. Jackson (p. 500); that he did not at that time make any attempt to measure up the tonnage that was in the mine; that before going to the mine Mr. Taylor had shown him a map which purported to show assays which Bancroft had gotten at his second examination and they were all very low; the map was on tracing paper and was drawn with a red pencil and had assays on it on the third level North and on the shaft between the fourth and fifth level; these assays were all very low and

that when they got to the mine he took this map and showed it to the mine foreman and said, "There's part of what Mr. Bancroft has found in his mine at his second examination." This, he testified, was said in the presence of Taylor and Jackson and that the foreman looked at the map and said:

"I don't care what Bancroft says, there is ore in that third level North and there is ore in the bottom of the shaft,"

and he said,

"If you will come down in the mine I will prove it to you."

That they went down in the mine with that point in mind, because from the conversation he had with Mr. Taylor he didn't know whether these were Bancroft's assays or what they were, and he thought that if they were Bancroft's assays it would be very easy to check them up by panning; that is, one can have some idea as to what the mine is by assays or as to whether there is some ore in it (p. 505; that on the third level they found good ore and bad ore; at different places the ore was spotted; there were spots of bad and spots of good; that Mr. Taylor told him that the assays represented upon the map were Bancroft's assays; that they were assays of the samples taken by Bancroft at his second examination (p. 506); in the bottom of the shaft on the North side they found very good ore; on the south side they found low grade ore; we would not say it was ore at all; it was simply a low grade vein. Mr. Taylor said he was not interested in any panning and that he was going to abide by Mr. Bancroft's report. He denies that he stated in the course of that conversation in substance or effect either to Mr. Jackson or Mr. Taylor, or in the presence of either of them, that Mr. Bancroft's report on the tonnage of that mine was right. He denies that there was any discussion as to tonnage in the mine (p. 509); de-



nies that on that occasion they made any investigation of the tonnage in the mine. He states that he had not intermediately between that occasion and April 2nd made any investigation of the tonnage in the mine. He denies that he ever either at the mine or in Lovelock at the company's office or elsewhere in the State of Nevada said anything in substance or effect that he had represented to Mr. Taylor that there were 60,000 tons or at least 60,000 tons or any number of tons whatever of ore in the mine belonging to the Tungsten Company (p. 510). He denies that he ever silently acquiesced in any statement made in his presence to the effect that he had represented to Taylor that there were 60,000 tons of ore in the mine belonging to the Tungsten Company, but says:

“Well, there may have been some mention of tonnage in that conversation in San Francisco, I can't be positive about it. I don't recall it myself but my associates say that something like that took place.” (p. 511.)

He says he doesn't even remember that “tonnage” was mentioned in this conversation, yet he denies that he assented either orally or with a nod of his head or with the phrase, “Yes, that is so,” or otherwise, to any statement made by Mr. Jackson in his presence, alleged to have been made by him to Taylor in substance or to the effect that the mine of the Tungsten Company contained 60,000 tons of commercial ore (p. 512). He testifies that Taylor told him he didn't place any great reliance in Mr. Morrin because Mr. Bancroft had so reported that Mr. Morrin was not very reliable and he didn't like him (p. 513); that he told Mr. Taylor that these were Morrin's estimates and he could take them for what they were worth; that Mr. Taylor said he was going to absolutely rely on Mr. Bancroft; that while he didn't like him as a man he certainly admired him as a technician (p. 514). At page 515, Poole testifies:



"Well, when I made the representation as to distance and assays, and the explanations accompanying them, I told Mr. Taylor, I said, 'I will vouch for these distances, because Mr. Huntington is an accurate surveyor, but I won't vouch for these estimates on here as having any meaning,' and I said, 'I want you to get that clearly in mind, because I don't want to make any misrepresentations to you,' and he says, 'The only effect that any misrepresentation on your part would have on me would be to cause me to lose confidence in you and therefore I would not use you as superintendent of the property.'" (p. 516.)

On page 520 he says:

"Those were the distances which I had given him in Denver, as new data since Bancroft's report in January."

He says that when he, Taylor and Morrin went down in the mine about the middle of April they took 100 pannings (p. 520). On cross-examination he said they might not have taken more than 25 or 30 pannings (p. 594). According to his testimony (p. 520) he says they were in the mine about four hours. It would have been impossible to have taken 100 pannings in that time. In the latter part of May, when Poole, Taylor and Jackson went down in the mine, Poole says that Taylor stayed on top and didn't go down in the mine because he said he wasn't interested; he had Bancroft's report and he was going to stand on it (p. 522). That at Lovelock just before starting for the mine he had a conversation with Mr. Taylor and Mr. Jackson in reference to the Bancroft report not being favorable; that he met Taylor and Jackson on the street and that

"Mr. Taylor's first words to me, as I recall it, were 'Bancroft's report is unfavorable,' and I said, 'What?' He said, 'Yes, his report is unfavorable.' 'Well,' I said, 'how do you reconcile that with the telegram that you sent me that it was favorable?' 'Well,' he says,

'his first report was a preliminary estimate of tonnage and he didn't have his assays and the tonnage report was favorable.' 'Well,' I said, 'how do you reconcile it with the telegram you sent to Thane?' Thane had given me a copy of that in which he reported 40,000 tons. I told him I didn't think Bancroft would make an exact statement of 40,000 tons. I don't recall any answer that Mr. Taylor ever made to that." (p. 523.)

He denies that in that conversation or any conversation that he had with Taylor in the presence of Jackson or otherwise at this time in Lovelock was anything said with regard to Morrin having lied to him. Poole testifies that he said:

"Taylor, it occurs to me you are lying about these things; have you got the money to go through with this deal?" and then is when he told me he expected to put so much money in himself and so much money his father intended to put in and so much Brown would put in, but that Mr. Brown and Mr. Brunton would probably visit the property." (p. 524.)

Is it reasonable to suppose that Poole, on whom Taylor was relying and who was to be appointed superintendent of the mine in the event of the deal going through would address such language to Taylor? On cross-examination Poole testified that he had been acting as the manager or superintendent of mines for sixteen or seventeen years (p. 529); during that period was connected with various mines (p. 530), several of which were controlled by Mr. Friedman. Up until January 31, 1918, by virtue of a contract that he had with Mr. Friedman, he acted as consulting engineer for the Tungsten Company (p. 531). Poole examined and approved Bancroft's plan of development of the mine and discussed it with the directors and officers of the company, and also in great detail with Mr. Morrin, the superintendent of the mine (pp. 532-33). Poole was at Tonopah when he received a telegram from either Murrish, Nenzel or Friedman informing him that Taylor was coming to visit the mine and asking him to return home

(p. 536). At page 595 the Court, in referring to the time when Poole went down in the mine with Taylor on April 9th and took the numerous pannings, asked Poole:

“Did I understand you to say you did any measuring at that time? A. Yes, I had been very cautious in Denver as to the representations I made to Mr. Taylor and one of the things I had vouched for was that the development work as shown on that map, had been done; I said, ‘Mr. Taylor, I am positive of that’ and I wanted to keep Mr. Taylor’s confidence because I expected to be superintendent of that property if Mr. Taylor went through with this thing.”

Nenzel in his testimony recalls trip to San Francisco latter part of May or first part of June, 1919, at which he met Mr. Jackson. He states he first saw Mr. Jackson on Monday, June 2nd, 1919, in Mr. Bayless’ office. In response to a question as to what in substance and effect Mr. Jackson said in his presence on that day, he replied:

“Well, he said that we had represented there were 60,000 tons of ore in the mine while we were at Denver and that Mr. Bancroft’s report only shows 19,000, and that, therefore, they wanted to make a modified agreement with us.”

Denies that he nodded his assent thereto and states that he did not orally express assent thereto or do anything whatsoever to indicate his assent thereto, and that he did not assent to that statement (p. 610). Says he remained silent on the occasion when that statement was made by Mr. Jackson (p. 611). Testifies that he and his associates agreed not to say a word but to hear Mr. Taylor’s proposition. Testifies that Mr. Jackson again referred to the same matter that afternoon and that Jackson said that they had consented through silence; that Jones, Poole, Murrish, himself, Taylor and Bayless were present at the time. Nenzel says that he told Jackson that he did not consent by silence and that he told him he did not under-



stand his words when he used that foreign language which he used, referring to the term "acquiescence" used by Mr. Jackson (p. 612); also testifies that Murrish said he did not consent by being silent; does not believe Jones said anything and that Poole said he did not make such a representation (p. 613).

Murrish testifies that he was in San Francisco the early part of June, 1919; that on that occasion he had conversations with Taylor or Jackson in the presence of Taylor; that he met Jackson and Taylor in the office of Bayless on Monday morning, June 2nd (p. 633), in company with Mr. Nenzel, Mr. Poole and Mr. Jones; that they went there pursuant to an engagement that they had previously made with them and Mr. Taylor told them that Mr. Jackson would speak for him. He says:

"Mr. Jackson opened the conversation by stating that 'you people told Mr. Taylor in Denver that there was 60,000 tons of ore in the mine, now Mr. Bancroft reports that there are only 19,000 tons there. So Mr. Taylor does not feel justified in putting the money of his friends into this proposition on the basis of the present contract, and he will have it modified.' 'Now,' he said, 'we are willing to put up \$75,000. to pay creditors and we will pay the rest of the debts as soon as the ore is developed that you stated was in the mine.'"

On that occasion when that statement was made by Jackson, Murrish says he did nothing, did not nod his assent and did not express his assent thereto (p. 634). He says that he and his associates had agreed before going to the meeting that there would be no discussion of any matter on their part; that they would simply listen to Mr. Taylor's proposition and retire and consider it, returning later to discuss the matter with him. Murrish testifies that on Monday afternoon Mr. Jackson again started a conversation. He says: (p. 535)



"I don't recall whether he said you admitted or you stated to our folks, stated that there was 60,000 tons of ore in the mine; and I then took issue with Mr. Jackson; and I said, 'I made no such statement as that', and he said, 'Yes you did.' He says 'your silence was assent', and I said, 'my silence was not assent in that case because I never made such a statement' and the minute I finished Mr. Nenzel got up and he said, 'I never made such a statement as that either,' he says, 'I don't understand your terms, but' he says, 'I never made such remark as that'; and while Mr. Nenzel was still talking Mr. Poole got up and he started in a gentlemanly manner to enter into a discussion."

Murrish further testifies that Poole said he had never made any such statement as that to Mr. Taylor, that there were 60,000 tons of ore in the mine. The discussion then followed about the modified form of contract and Murrish testifies that he stated it would be absolutely impossible for them to agree to any modification if it did not arrange for the payment of all of their debts. That, as he recalls it, that was all there was to it. They argued this modification they wanted and he and his associates argued that they could not consider anything that did not pay all of their debts. They again met on the following morning, which was Tuesday (p. 636). The first thing he recalls at that meeting is that

"The first thing Mr. Nenzel used as argument was that if they only paid \$75,000 worth of our debts we would have no money to operate the mine, and it was preposterous to consider such a proposition; then Mr. Taylor said under those circumstances he would advance an additional \$10,000. to work the mine, and Mr. Jackson, as I remember, had that morning a sheet of paper on which he had the modifications that he wanted us to assent to." (p. 637).

The document which he testified Mr. Jackson had on Tuesday morning, on which he had the modifications that he wanted them to assent to, was identified by Murrish as defendant's Exhibit Z. He testifies that this paper was

used during the discussion and upon the termination of the discussion that Mr. Nenzel took it away with him on the day of that meeting on Tuesday (p. 638). On cross-examination Mr. Murrish testified with great particularity and positiveness that this document, including even certain corrections, constituted the first proposition which was presented at the meeting on Tuesday, June 3rd. Mr. Thatcher testified that this document, which Murrish was so sure had been presented at the meeting in San Francisco, on June 3rd, was, as a matter of fact, prepared some few months later at Mr. Thatcher's office at Reno and that the pencil notations and alterations thereon were in the handwriting and made by Thatcher; that at the time of the meeting in San Francisco the document was not in existence. Counsel for Defendants were obliged to admit that Murrish testified falsely that this document was presented by Mr. Jackson in San Francisco and constituted the first proposition for a modified contract submitted by Jackson. Mr. Jackson also in his testimony denied having prepared or presented any such document, as testified by Murrish. Murrish denies that he agreed at any time prior to the meeting of the creditors which was held on Saturday that he would advocate the adoption of the proposed modified agreement at the creditors' meeting (p. 643). He states that he called the meeting of the creditors to order and stated briefly the object of the meeting; that they were indebted in a large sum of money to them and that their indebtedness was rapidly maturing and that they were anxious to pay their debts or to secure the creditors in the payment and that they were dealing with Mr. Taylor, who had submitted a proposition to them concerning the mine, but that they felt they were in the hands of their creditors, if not legally, they were morally. The property was theirs and they would be governed wholly by whatever action they took at the meeting; that he then told them that Mr. Poole would address them on the state

of their affairs and the chances and the likelihood of their liquidating their debts; that Mr. Poole made such statement, after which he read the proposed contract with the addenda, that is, Exhibit 17, and the addenda, Exhibit A-1. That when he had gotten part way through this proposed contract, Edson Adams, one of the creditors, said, "we have heard enough of that." Several of the other creditors, however, said, "Oh, let's hear it all; let him finish it," and so he completed reading the proposed contract with the addenda, after which there ensued a general discussion (pp. 644,645). He states that at that meeting not a single creditor assented to the contract, Exhibit 17, as modified by Exhibit A-1; that they did not agree to the execution of that contract with the addenda. He states, however, that if their creditors insisted on their signing it they would, but that was the only condition (p. 646).

Thus, it will be seen from the foregoing testimony that Mr. Jackson stated at the meeting in San Francisco at which Poole, Murrish, Nenzel and Jones were present, that they had stated to Taylor in Denver that this mine contained 60,000 tons and that Mr. Bancroft's report showed it contained only 19,000 tons. Nenzel and Murrish admit that Jackson made this statement to them at the first meeting on Monday morning, and again referred to it at a meeting which they had on Monday afternoon, and say that they remained silent; they further testify that Mr. Jackson on the following day stated to them that they had admitted those facts were true by their acquiescence and that in response to this statement by Jackson, Murrish testifies that he got up and said,

"I don't acquiesce. I never made any such statement, and I don't want my silence to be taken as acquiescence."

Mr. Nenzel also testifies that he had made no such representation and had not admitted the facts stated by Mr. Jackson by his silence and acquiescence. Poole, however,



does not testify as to this, because Poole says that he does not even remember any conversation taking place as to tonnages in San Francisco, but that there probably was, inasmuch as his associates state that there was such a conversation. Poole is the very person who made the representations as to the tonnage and it will be noted that he is the one who seeks to escape the effect of his admissions to the statements regarding tonnage made by Mr. Jackson in San Francisco, by testifying that he has no recollection of any conversation at which the subject of tonnages was mentioned, and he is the very person who Mr. Jackson states positively admitted the correctness of these statements by word of mouth, as well as by nodding his head at the time the statements were made by Mr. Jackson. There is no conflict between the testimony of Mr. Murrish and Mr. Jackson as to Murrish having said to Mr. Jackson that he individually had not made any such representations as to tonnage, except that Murrish claims that he made this statement at the meeting, whereas Jackson testifies that Murrish did not make this statement until they were leaving the meeting and then off at one side, in an effort to relieve himself personally from any responsibility for having made any such representations which had turned out to be false. Taylor, Bayless and Jackson all deny that Poole, Murrish or Nenzel ever got up in the meeting and said that they didn't admit these things by failing to deny them. Jackson further testifies that the only statement of that kind made by any of them was the statement above referred to, which was made by Murrish to Jackson as one of the meetings was adjourning. According to the testimony of all parties, Mr. Taylor stated at that time that he was willing to put up \$85,000, \$75,000 to be applied pro rata to the creditors and \$10,000 to be used as working capital, and that he would put up additional money for the payment of the balance of the creditors as rapidly as new ore was developed. Mr. Mur-



rish testified, and there is no dispute about it, that Mr. Jackson said on behalf of Mr. Taylor after they presented a form of contract, "you can make any modifications or alterations or changes that may be advisable or necessary," opening up the door at all times for anything which would be fair, just and equitable in the light of the circumstances as then found to exist; and that they did exist in fact is undisputed, because Mr. Bancroft's report—the second report—stands undenied and uncontradicted, that the commercial ore in the mine was 19,800 tons and no more.

Jackson's testimony is that they accepted the proposition and that they stated they would endeavor to have the creditors accept it. Murrish's testimony is that they didn't accept it; that he wanted the proposition as presented to the creditors to be Taylor's, and Taylor's only. He admits and they all admit that they didn't recommend it to the creditors and did not ask the creditors to consent to the contract or make any endeavor to have the creditors join in the contract or consent to it or put it through, or suggest it was tentative and could be modified. The creditors' meeting was held and nothing came of it, as far as any acceptance of the contract is concerned, and that ended the negotiations as between the parties.

At the meeting in San Francisco, Murrish testified:

"I asked Mr. Taylor this question; I said, 'Are you going to exercise your option of April 2nd?' He said, 'Yes, by paying \$75,000 of the debts and paying the rest when the mine is developed.' Then I said, 'You are not going to exercise your option,' and he said, 'Yes, by paying \$75,000 of the debts and paying the rest when the mine is developed', and I repeated, 'Then you are not going to exercise your option. He said 'Yes, by paying \$75,000 on the debts and the balance when the mine is developed.' "

Analyzing the foregoing testimony of the several witnesses as to what occurred at the meeting in California, we

have the undisputed facts (a) that at the first meeting at which Poole, Nenzel, Murrish and Jones were present Mr. Jackson stated that they had represented to Taylor that there was a tonnage of 60,000 tons and that Mr. Bancroft's report showed that it contained only 19,000 tons; that Mr. Taylor did not feel justified in putting the money of his associates, and himself into the proposition on the basis of the existing contract and that it would have to be modified; Nenzel and Murrish admit this, and Poole says he has no recollection of it but that so long as his associates state that Jackson made such a statement, perhaps he did; (b) that Taylor made a new proposition based on Bancroft's report and offered to make a loan of \$75,000 to be paid to the creditors and \$10,000 additional for working capital and offered to make further advances up to the amount of the original proposition as and when further ore might be developed; (c) that Poole, Nenzel and Murrish made no effort to induce the creditors to accept the modified proposition of Taylor.

There is a dispute as to what Poole, Nenzel, Murrish and Jones said and did at the first meeting when Jackson made the above statement as to the discrepancy in the tonnage as represented and shown by Bancroft's report. Jackson, Taylor and Bayless testify that Poole said, "that is so" or "that is correct," and that Nenzel evidenced his assent by nodding his head. On the other hand, Poole, Nenzel and Murrish testify that they all remained silent pursuant to a pre-arranged understanding that they would not discuss any matters at this meeting, which was called for the purpose of discussion. They do not claim that they took issue with Mr. Jackson or denied the correctness of the statements made by him, although Mr. Jackson was only attempting to give his understanding of the situation and was endeavoring to get at the true facts for the purpose of reaching an equitable adjustment and specifically requested them to correct him if he was mistaken.

They testify that they let Jackson go on and make this statement which charged them with having made serious misrepresentations and they simply remained silent.

If they had acted honestly in their dealings with Taylor and had not been guilty of making these misrepresentations, what occasion would there be for them to enter into a secret arrangement not to discuss matters with Jackson and Taylor? Would it not be the most natural thing in the world for them to boldly assert their rights and not only correct but resent any charge of misrepresentation? Mr. Poole was a man of intelligence, an expert mining engineer, who would appreciate the seriousness and the effect of remaining silent in the face of such charge of misrepresentations, and could ill-afford to let such a charge, if false, pass unchallenged. He knew what misrepresentations of this character meant, for did he not testify that he said to Taylor:

“Well, when I made the representation as to distance and assays and the explanations accompanying them, I told Mr. Taylor, I said, ‘I will vouch for these distances because Mr. Huntington is an accurate surveyor, but I won’t vouch for these estimates on here as having any meaning,’ and I said, ‘I want you to get that clearly in mind **because I don’t want to make any misrepresentations to you.**’”

Mr. Murrish was a lawyer, presumably familiar with the legal liability which must result from making such misrepresentations, and also aware of the fact that silence in the face of charges of such a serious nature would in law be regarded as acquiescence on their part and amount to an admission by them of the truth of the charges. Under the circumstances, we submit, the testimony of these two gentlemen is beyond belief. Then there is Nenzel who says he also remained silent and who testified that when they met at a subsequent meeting that Jackson said they had admitted the truth of his statement by reason of their



silence. He did not understand Jackson's remarks because Jackson spoke in a foreign language—he used the word “acquiescence” in referring to their silence. Nenzel however possessed sufficient mental acumen, and intelligence when it came to sending out letters and telegrams to Taylor, depicting the wonderful progress in the development of the mine (see especially Plff's. Ex. 2, p. 78). In view of the numerous false and incredible statements testified to by Poole, Nenzel, Murrish and Friedman, we cannot see how any weight whatever can be given to their testimony, and we respectfully submit that the entire testimony should be discredited by the Court as being the testimony of discredited witnesses and as being incredible and untrue. As pointed out above, there is no dispute but that Taylor offered to make a loan of \$75,000 and \$10,000 additional for working capital. Taylor at the time was a creditor to the extent of about \$70,000. Taylor offer was therefore, in effect an offer to take up two-thirds of the indebtedness of the Company, and advance an additional \$10,000 for development of the mine. This constituted not only an effort on his part to adjust the matter on an equitable basis; it was in reality an offer to do more than equity required for the reason that the amount of the loan, which he was then willing to make, was more than the proportionate amount of the original loan after making due allowance or abatement for the discrepancy between the represented tonnage and the actual tonnage. Furthermore, as pointed out above, the defendants, according to their own admissions, refused to make any effort on their part to bring about an equitable adjustment of the matter, in that they made no effort whatever to induce the creditors of the company to accept the modified proposition of Taylor.



## INDUCEMENT

Defendant's Exhibit B undoubtedly was made up by Taylor after the calculations of the tonnage had been made from Plaintiff's Exhibit Y, showing over 60,000 tons in the mine. According to Poole it formed the basis of the negotiations which resulted in the agreement, the tonnage of 35,400 tons therein stated is the estimated amount necessary to place the proposition on a banking basis predicated upon a market of \$8.00 per unit for tungsten—"the number of tons necessary to make a safe investment against the debts" (p. 575-576). Some tungsten had been sold at \$9.00 per unit and the evidence shows that the market for tungsten was declining, so that \$8.00 per unit could not be regarded as an unreasonable figure. While Poole, Nenzel and Murrish positively state that neither of them at any time mentioned tonnages or percentages, Poole says that Taylor did mention the tonnage set forth in Defendant's Exhibit B. Poole says it was the figment of Taylor's imagination, but Poole did not correct Taylor, although he admits that Taylor had informed him that he proposed to undertake to raise the necessary funds on a banking basis. Poole was an expert mining engineer, knew the condition of this mine, and he, Nenzel and Friedman had furnished Taylor with numerous reports of further development, whereas Taylor was not an engineer and was not familiar with matters pertaining to mine development. Then, also, Taylor stated in the prospectus (Exhibit "U" p. 923) which he got out and in various communications (Exhibits 32 p. 837) a minimum of 40,000 tons. Can it be said that such a tonnage would be unreasonable in making an allowance of 5,000 tons to cover any possibilities above what was absolutely necessary to put it on a banking basis? Now as to the representation of 60,000 tons: The Trial Court seems to place great weight on the fact that Taylor made no mention of such tonnage,

in his communications and that in his prospectus and various other communications he referred to a minimum of 40,000, 41,000 and 43,000 tons: Again we say, is it unreasonable that Taylor should adopt a conservative figure, safely above a banking basis and which would be sure to stand the test of any inspection or examination by the engineers of any parties who might consider making the loan? Taylor's representations as to a minimum of 40,000 tons was ample for the purpose; he considered it very conservative and there was no necessity for his representing any larger tonnage. Why, we ask, does Taylor charge the defendants with having represented 60,000 tonnage in sight? There can be only one answer—because it is the truth; because the calculations based on the lines and figures shown on Plaintiff's Exhibit Y show over 60,000 tons of commercial ore. Taylor relied on these representations and was induced thereby to undertake to procure the necessary loan. If Taylor had wanted to fabricate his pleadings he could easily have charged the defendants with having represented that there was more than 40,000 tons in sight so as to have it correspond with the tonnage set forth in the prospectus. He did not do this; he told the truth. Bancroft's final report is not challenged; it is admitted to be correct; and this means that the mining map, Plaintiff's Exhibit Y, produced by Poole, represents a false condition of the mine; it is fraudulent and misleading, and this is the all important piece of documentary evidence in the case from which the defendants could find no avenue of escape. This document corroborates Taylor's story. It alone is sufficient to outweigh the testimony of the defendants and render their story incredible.

Taylor further positively testifies that if the false representations had not been made he would not have entered into the contract or undertaken to secure the loan (pp. 59-60).

Poole, Nenzel and Murrish, in an effort to escape liability, have testified, as pointed out above, that the calculations were not made until the terms of the contract had been agreed upon and the formal agreement was being typewritten, and it is argued therefrom that the calculations did not constitute any inducement to Taylor entering into the contract. But Poole and Nenzel do testify that the calculations were made before the contract was finally signed. Poole (p. 497) says: "The contract was signed subsequent to the conversation." This is corroborated by Nenzel (pp. 616-617).

Now, we contend that even if this were true, it would still constitute a material inducement for his entering into the contract. Is it reasonable to suppose that Taylor would have signed the contract and given his efforts and expended his money endeavoring to secure a **loan** on a **banking basis** if he had then known that the tonnage in sight, instead of being 60,000 tons as disclosed by the mining map ,(Plaintiff's Exhibit Y) was only 18,900 tons, as shown by Bancroft's final report which was made over a month later and included all development since April 2nd, in view of the fact that it was necessary to have tonnage of 35,400 tons to put it on a banking basis according to the estimate made in Defendant's Exhibit B.

IT IS NOT A DEFENSE THAT PLAINTIFF ALSO  
MADE SOME OTHER EXAMINATIONS AND IN-  
QUIRIES IF THE CONDUCT OF DEFEN-  
DANTS WAS A MATERIAL, THOUGH  
NOT THE SOLE, INDUCEMENT TO  
THE TRANSACTION IN QUES-  
TION.

In the case of **Tooker v. Alston**, 159 Fed. 599 (CCA. 8th Dist.) the Judges sitting were Sanborn, Hook and Philips. Judge Hook, writing the opinion for the Court, says:



"The Boston-Aurora Zinc Company, a Maine corporation, as the owner of 10 acres of land in southwest Missouri, executed a mining lease thereof, dated November 18, 1904, to Tooker, Loy and Reed."

In this case, representations were made as to the mine, which representations were false. Independent investigations and inquiries were made as to the mine and it was contended that the presumption of law arose that the party relied upon his own independent investigations and not upon the representations as made. These independent investigations were made before the contract was entered into. The Court says at page 603:

"The next four assignments of error relate to the refusal of the trial court to give certain instructions requested by defendants. The instruction set forth in the first of these was fully embodied in the general charge. The court was not required to repeat it, or to give it in the language of counsel. By the instruction in the next one counsel sought the declaration of a rule that if the plaintiff made an investigation himself, and consulted with others as to the condition of the mine or its value, there is a presumption of law that he acted upon information so gained, and not upon the representations of defendants. There is no such presumption of law. In *Sioux Nat. Bank v. Norfolk State Bank*, 5 C. C. A 448, 56 Fed. 139, this court held that it was not a defense that plaintiff also made some other examinations and inquiries, if the conduct of defendants was a material, though not the sole, inducement to the transaction in question."

We call the Court's attention also to the case of *Allen v. Pendarvis*, 159 Pac. 1117, in which the Court at page 1118 says:

"From the evidence of plaintiff it is apparent that he was actuated in the purchase of this stock by a desire to get a better position than the one he was then occupying, and from this instruction the jury was authorized to find for the defendant, if the plaintiff was induced to buy the bank stock by or through the agency of some other influence than any representa-



tions made to him by the defendant at the time of the sale. This instruction advised the jury that they must find for the defendant unless the plaintiff acted solely upon the alleged false representations made to him by the defendant. This is not the law. In an action like this, in order to entitle the plaintiff to recover, it is not necessary that the fraudulent representations complained of should be the sole consideration or inducement moving the plaintiff to make the purchase from which the injury ensued. If the representations contributed to the formation of the conclusion in his mind to buy, that is enough, although there may have been other inducements operating at the same time and aiding and leading him to that determination. A true test in such cases may be found in the inquiry whether the plaintiff would have bought the stock if the false representations had not been made. If he would, then the false representations did not contribute to the purchase; for he would have bought without them, but if he would not have bought without the representations, then they contributed to the purchase and the party making them is responsible for the damage which the plaintiff suffered, notwithstanding that other equally powerful motives may have influenced his mind at the same time in the same direction and without the existence of which he would not have come to the conclusion to buy. If the plaintiff would not have bought the stock except for the representations alleged to have been made by the defendant, then he would be entitled to recover if such representations were in fact made, were material, and were false, even though he would not have bought the stock unless he was able to secure a position in the bank, 12 R. C. L., p. 358, 112; Tooker v. Alston, 159 Fed. 599; Dime Sav. Bank v. Fletcher, 158 Mich. 162; Buchanan v. Burnett, 102 Tex. 492; Shaw v. Stine, 21 N. Y. Super. Ct. 157."

The case of **City of Tacoma v. Tacoma Light & Water Company**, 50 Pac. 55, was one where the Tacoma Light & Water Company represented to the City, the purchaser of the water plant, that it had certain conduits and sources of water supply of a certain capacity and flow; the City of Tacoma employed an engineer who made an examination;

it was a partial examination; it was not a thorough examination. The Court held that even a partial examination does not bar an action for deceit for false representation, if the false representation was a material inducement to the entering into the contract in question.

It appears from the testimony that Poole was an expert mining engineer; that he had been connected with a number of mines of this character; had had a great deal of experience in the development of same; that he thoroughly understood the development of mines of this character, and knew the development and value of this particular mine so much so that Taylor proposed to make him superintendent. It also appears, on the other hand, that Taylor was inexperienced in mining matters; that outside of some business he had transacted in connection with the sale of ores, he had no knowledge regarding mines. Taylor testified that he relied upon the representations as to the condition of development of this mine made to him by the defendants, and that if he had known that the representations were false he would not have executed the contract of April 2nd, nor entered upon the performance thereof. An attempt was made all through the case by the defendants to show that the plaintiff did not rely upon any representations made to him by the defendants; that he was relying upon Bancroft and such examinations as he had personally made himself, and that, therefore, he was not induced to execute or enter upon the performance of said contract by reason of any representations made by the defendants to him. We contend that it does not make any difference whether mentally or otherwise Taylor determined upon a further examination by Bancroft and that he did not have to continue to rely solely upon the representations which had theretofore been made to him. The fact that a person has an independent investigation made does not give rise to any presumption of law that he relied upon that investigation and

not upon the representations. The law is well settled to the contrary.

On these questions we call the Court's attention also to the following cases:

**Schoefield Co. v. Schoefield**, 40 Atl., 1046;  
**Safford v. Grout**, 120 Mass., 20;  
**Shaw v. Gilbert**, 111 Wis., 165;  
**Lewers v. Crandall**, 7 Mo. App. 564;  
**Sioux Bank v. Norfolk Bank**, 56 Fed. 139;  
**Kraus v. Bank**, 167 N. W. 352;  
**Schmidt v. Thompson**, 167 N. W. 543;  
**Prescott v. Brown**, 120 Pac. 991-994.  
**Green v. Turner**, 80 Fed. 4186 Fed. 837.

It will be noted from the foregoing cases that the representations need not be the sole inducement and there is no presumption of law arising from an independent examination that he did not rely on the representations. Taylor continued to endeavor to interest capital in New York in the enterprise. He employed Mr. Jackson to act as attorney to complete the deal. He had Mr. Bancroft make another examination, and, we submit, that that in itself is a reliance upon the statements and representations theretofore made. He paid Mr. Bancroft a fee for it and paid his expenses. According to the testimony, he left New York about the 20th of May for the purpose of coming West to complete the transaction; he had not had any success in New York in getting subscribers to the loan,—actual bona fide subscribers, but while in New York, still relying upon the representations which were made, commencing on the 14th and continuing up to the 21st of May, he sold stock upon the Stock Exchange in the sum of \$57,000, taking a loss upon that of something over \$4000. Before he left New York he arranged with the New York Trust company for a \$40,000 loan secured by concentrates. He came West, met Mr. F. M. Taylor and Mr. Brown, and he actually received from Mr. F. M. Taylor his check for \$25,000 for the consummation of the deal; he wrote to the



defendants and stated that he was going through with the transaction; that he and Thane, together with his father and Brown, would have the money ready to complete the transaction. Taylor wired from New York and had Bayless go up and make an examination of the records of the corporation and the title of the company, paying his expenses and obligated himself for Mr. Bayless' fees. He continued in fact, and by act, and by expenditure of time and money, at all times after the 1st of May and after the 14th of May to actually and truly rely upon the representations which had theretofore been made to him; and he never failed to rely upon them until he received Bancroft's last report.

TAYLOR ENTITLED TO COMPENSATION UNDER  
CONTRACT, HAVING PERFORMED ON HIS  
PART AND THE TRANSACTION HAVING  
FALLEN THROUGH BY REASON OF MIS-  
REPRESENTATION OF DEFENDANTS

It is our contention that in this case Mr. Taylor fully performed the terms of the contract on his part; that he procured the money necessary to be paid over and was ready, willing and able to pay over the same when it was discovered that the representations which had been made to him by the defendants as to the condition of the development of the mine were false—when Bancroft's final report disclosed the fact that instead of a tonnage of 60,000 tons, as represented, there was a tonnage of less than 20,000 tons. The law is well settled that where a person, acting in the capacity that Taylor was, obtains the money necessary to complete a loan which he was commissioned to get and brings the people together ready to deal and the transaction falls through by reason of false representations or misrepresentations, that he has earned his compensation. The Court's attention is called to the case of *Dotson v. Milliken*, 52 L. Ed. 768; 209 U. S. 237, which was



very much like this case, except that in that case the party was employed to effect a sale, whereas in this case Taylor was to procure a loan. In this case the Court said:

“This is an action for a commission of \$2.50 an acre on 10,000 acres of coal land belonging to the defendant, the plaintiff in error, for which, although not sold, the defendant in error, the plaintiff, says that he furnished a purchaser, satisfying the terms of the understanding on which he was employed. The errors alleged and now insisted upon are the giving of an instruction requested by the plaintiff and refusing one asked by the defendant.”

Relations between the parties were opened by letter, resulting in the employment of the plaintiff. Representations were made that a railway company was willing to build a railroad into the said property, etc. Relying upon these representations, a purchaser was found who was able, ready and willing to purchase the land, provided the representations were correct. The sale failed because of the inaccuracy of the defendant's representations, which were discovered when the deal was about to be consummated. The Court at page 240 says:

“The foregoing letters show that the plaintiff was employed and went to work. He spent a good deal of time and money in his efforts, as the defendant knew. There is no reasonable doubt as to the rate at which he was to be paid, and the substantial question is what he had to do to entitle himself to his compensation. The bargain made may have been improvident and may have been different from that which the defendant would have made if he had taken all the chances into account. But the general question is what the jury was warranted in finding to have been made in fact. It was recognized that what the railroads would do was decisive, and it was to be expected that parties thinking of a purchase would require an assurance from them, or something more definite than what the defendant had said. \* \* \* \* \* The jury was warranted in finding that the plaintiff was employed at the rate named to make a bargain for land to be identified later and subject to requirement of the pur-

chaser that the railroads or one of them would agree to build a road into the land.

The ruling requested for the plaintiff was as follows:

‘If the jury believe from the evidence that the defendant, on or about the 30th day of April, 1902, represented to the plaintiff that he, the defendant, was desirous of securing a purchaser for either the whole or any considerable quantity of the Harlan County coal lands at the price of \$20.00 per acre, that he had obtained from the Southern Railway Company its consent or agreement to construct a branch railroad into the said coal lands, and that he would pay to the plaintiff the sum of \$2.50 for each and every acre for which he should find a purchaser at and for the price of \$20.00 per acre, and that shortly thereafter, namely, on or about the 8th of May, 1902, he further represented to the plaintiff that the Southern Railway Company was willing to build the said railroad into the said property without placing any requirements on the purchasers or holders of said lands to put in any certain size of plants or number of coke ovens, and that the plaintiff, relying upon the said representations of the defendant, expended time and effort in the attempt to find a purchaser, and did find a purchaser able, ready and willing to purchase ten thousand acres of the said lands at the said price provided the defendant’s said representations were correct, and that the said sale failed because of the inaccuracy of the defendant’s representations that the said Railway Company had so consented or agreed to construct a branch railroad into the said coal lands, then the plaintiff is entitled to recover the said stipulated sum of \$2.50 per acre on the ten thousand acres, or \$25,000 in all.’

This was given, and the defendant took a general exception.

It is objected to this ruling that the jury was not required to find and could not have found that any particular land was agreed upon. But it at least would have been warranted in finding that the plaintiff had done in this respect all that his bargain required him to do. The agreement failed for a wholly different reason, and no difficulty in completing the sale arose on that ground. We are of opinion that the objection



is entitled to no consideration, especially upon a mere general exception and upon a point not taken in the trial court. **McDermott v. Severe**, 202 U. S. 600, 611."

The Court further says on page 243:

"The ruling requested for the defendant was as follows:

'If the jury believe from the evidence that any bona fide purchaser was actually found by the plaintiff for 10,000 acres of said land as claimed in the declaration, upon the representations of said plaintiff to said purchaser as to the existence of a certain agreement between the defendant and the Southern Railway Company concerning the construction of a branch railroad into said lands and the purchaser did not rely on the said statements and representations of said plaintiff, but with the knowledge or cooperation of said plaintiff and at his suggestion sought and undertook to verify the truth of such statements and representations during the pendency of the negotiations for the purchase of said land before any transaction was closed for the purchase thereof, and that said purchaser had the opportunity of investigating, ascertaining and verifying the truthfulness of such statements and representations, and took advantage of that opportunity by interviews, conferences or written communications, either personally or by attorney, or by others, with the president and first vice-president of the Southern Railway Company, for the purpose of verifying the said statements and representations so made by the plaintiff as to any agreement existing between the defendant and Southern Railway Company in regard to the construction of the said branch railroad, and ascertained from the said officers of the said Railway Company, from time to time during said negotiations and before September 15, 1902, the date upon which it is alleged in the declaration that said purchaser was found, that no agreement existed between the defendant and said Southern Railway Company to build said branch railroad, but that the subject of building such branch railroad had only been discussed, and that the building thereof depended on the development and improvements to be placed on said land prior to the construction of any railroad, in the way of opening coal mines, establishing coke ovens,

or furnishing the railroad with a sufficient amount of tonnage, and that said plaintiff and alleged purchaser had full knowledge and information from the proper officers of the Southern Railway Company of all the facts relating to the conditions upon which said branch railroad would be constructed and of the non-existence of any agreement between the defendant and Southern Railway as alleged, then the defendant is not responsible for the non-appearance of the alleged sale or purchase of the land between the plaintiff and the alleged purchaser, and you should find for the defendant.'

As to this request we must repeat that it does not matter how much or how little the purchaser relied upon the defendant's representations if the plaintiff relied upon them and obtained a purchaser ready and able to purchase upon the basis that the defendant's representations to the plaintiff were true. That the plaintiff did rely upon them until the time when, on August 25, he announced Easter's readiness to purchase, hardly is open to dispute."

In **Spiers & Bevan v. Gluck**, 17 The Times Law Reports, p. 236, the Court says in its opinion at p. 237:

"Where an agent was employed, either to sell a house or to find a partner, on commission, and his employer made a statement to him which was to be the basis on which the agent was to go to work, if it turned out that that statement, though honestly made, was inaccurate, which inaccuracy caused a person to withdraw who otherwise would have been willing to buy the house or enter into the partnership, then the agent was entitled to claim his commission."

In **Green v. Lucas**, 33 The Law Times (N. S.) 584, the head note is as follows:

"Where an agent employed to borrow money upon lease-hold security finds a person able and willing to lend, but the negotiations go off by reason of such person discovering unusual covenants which the agent was not informed of, the agent is entitled to the whole of the agreed commission for procuring the loan.

The defendant agreed to pay the plaintiffs a com-



mission of two per cent 'for procuring him on loan the sum of £20,000 upon the security of certain leasehold property at Southwark' having three days before such agreement furnished the plaintiff with two valuations of the property, each of them stating the lease to be for a term of ninety-nine years, and setting the value at about £37,000, and one of them assuming that the lease 'contained no arbitrary or restrictive clauses but only the usual covenants.' Upon the strength of these valuations the plaintiffs applied for a loan to a provident institution, the directors of which agreed to advance it 'subject to the title and all other questions proving to be satisfactory.' Upon examination of the lease on behalf of the institution, it was discovered that the lease, instead of being a lease for ninety-nine years absolutely, contained a proviso for re-entry under certain conditions which constituted a substantial deterioration of its value, whereupon the directors refused to make the advance.

Held: (affirming the judgment of the Common Pleas) that the plaintiffs were entitled to the whole of the agreed commission."

In this case, Bromwell, B.—in his opinion says:

"I have but one little matter to add. I am of opinion that the word 'procure' in this contract, means to procure the lender and not the money, and that the contract was completed, as far as the plaintiffs were concerned, when they had procured a person who was ready and willing to advance the money."

Blackburn, J.—says in his opinion in this case:

"I am of the same opinion. The agent stipulates for a certain commission on what he can get, and says, if I succeed in getting a larger sum I am entitled to more commission. It might be prudent, in transactions of this kind, to introduce into the contract a clause such as 'If this goes off without fraud on my part, you are not entitled to your commissions,' though I do not know that the agent would consent to such a condition; but in the present case 'procure' means procure a person who is ready and willing to lend the money on the leaseholds. What that leasehold was must be seen by investigation of the title. The company agreed to advance the money, subject to the title; the agent had substantially succeeded in procuring the loan and it only failed through failure of the security."

On this question see also:

**Glentworth v. Luther**, 21 Barb. 145  
**Hugill v. Weekley**, 15, L. R. A. 1262  
**Little v. Liggett**, 121 Pac. 1125;  
**Hannan v. Moran**, 38 N. W. 909;  
**Cohen v. Farley**, 58 N. Y. Supp. 1102;  
**Goodman v. Hess**, 107 N. Y. Supp. 112;  
**Roberts v. Kimmon**, 3 So. 736  
**David v. Lawrence**, 34 Pac. 1051;  
**Smye v. Groesbeck**, 73 S. W. 972;  
**Conkling v. Crakaur**, 11 S. W. 117;  
**Fullerton v. Carpenter**, 71 S. W. 98;  
**Sullivan v. Hampton**, 32 S. W. 325;  
19 Cyc. 268, 269, 278;  
4 R. C. L., Sec. 49, p. 309;  
**Lewis v. Mansfield**, 121 S. W. 585.

Attention is called to **Hugill v. Weekley**, 15 L. R. A. (N. S.) at p. 1262, particularly with reference to the note. The syllabus reads as follows:

"The contract of real estate brokers provided that they were 'to make all the effort possible to make sale of the property, for which they are to receive 5 per cent commission for their services out of the first payment.' They procured a purchaser who was accepted and entered into a contract of sale and purchase with their principals at a stipulated price, to be paid in full at a stipulated time on delivery of deed. Held, that the brokers were entitled to recover the commissions according to the contract, notwithstanding the purchaser, because of alleged misrepresentation by the seller's employee, refused to complete the contract, or to pay any part of the purchase money.

When a real estate broker had done all required of him by his contract, unless limited by express provisions thereof, he is entitled to the compensation provided for therein.

Where a brokerage contract makes an actual sale a condition precedent to the right of a broker to demand compensation, if the principal and the customer found by the broker enter into a valid contract of sale, and the broker acts in good faith, the latter is not deprived of his right to a commission by the fact that the customer fails to carry out the contract.

Having performed his contract, a broker cannot be deprived of his commission, though for some reason not involving culpability on his part, but due to the misrepresentations of the seller, the contract of sale fails of execution."

And in connection with that we would like to call the Court's attention particularly to the wording of the contract of April 2nd (Plff's. Ex. C), which reads as follows:

"The first party undertakes **to secure by borrowing** for the Nevada Humboldt Tungsten Mines Company, and its allied companies, a sum sufficient to liquidate the indebtedness of the Nevada Humboldt Tungsten Mines Company, the Tungsten Products Company, and the proportion of the indebtedness of the Mill City Development Company which the second parties owe, said indebtedness estimated to be the sum of \$220,000, on or before June 16, 1919.

2. When or if the said first party shall secure the said sum sufficient to liquidate the entire indebtedness, as above provided, then and in such event the second parties promise, covenant and agree to transfer and deliver to the first party in full payment for services rendered in securing such sum of money, 62 per cent of the issued capital stock of"

these various companies. Now there is no place for that deposit to be made under the contract, but the contract does say,

"that a deposit of the amount necessary to liquidate the indebtedness as herein provided, in the Wells Fargo Nevada National Bank, shall be sufficient evidence of the performance of the conditions herein for the transfer and delivery of the stock as herein provided."

It is our contention that under the provisions of the contract, and under the facts, Mr. Taylor did actually provide for the loan in accordance with the terms of the contract; and the only reason the transaction fell down was due to the misrepresentations of the defendants as to the amount of ore in sight in the mine.



Under the circumstances it was not necessary that a tender should be made.

9 Corpus Juris 624.

## THE COURT HAS EQUITY JURISDICTION — SPECIFIC PERFORMANCE—PROPER REMEDY

It will be noted that the compensation which Taylor was to receive for his services under the contract of April 2nd consisted of 62 per cent of the stock of the Tungsten Company, 62 per cent of the stock of the Products Company, and 62 per cent of one-half of the stock of the Development Company. It will also be noted that practically all of the stock of these companies was owned and controlled by the defendants; that by reason of such ownership and control held by the defendants, it would necessarily follow that the stocks would have no market value; that by reason of their being mining stocks their value would necessarily be uncertain and subject to fluctuation; that the 62 per cent of the stock of these companies, which was practically all held by the defendants, could not be procured in the open market and in fact could not be procured from any other source than from the defendants; that the 62 per cent of the stock of these companies constituted a majority of the issued and outstanding stock and carried with it control of the companies and, therefore, this stock which Taylor was to receive possessed a special value by reason thereof which could not be measured in dollars and cents—so that, under the circumstances, the only place where Taylor could secure adequate relief is in a Court of Equity and the only remedy which would afford such adequate relief would be a decree of specific performance, compelling the delivery of the specific stock to which Taylor became entitled as his compensation by reason of his performance of the contract.

On the question of equity jurisdiction in this case and the propriety of the relief sought, we refer the Court to *Turley v. Thomas*, 31 Nev. 181, and particularly to page



195, where the Court quotes with approval the case of **Duff v. Fisher**, 15 Cal. 375, as follows:

“The jurisdiction of a court of equity to decree specific performance does not turn at all upon the question whether the contract relates to real or personal property, but altogether upon the question whether the breach complained of can be adequately compensated in damages. If it can, the plaintiff's remedy is at law only; if not, he may go into a court of equity, which will grant full redress by compelling specific performance upon the part of the defendant.”

From the authorities where the question of specific performance of an agreement for the sale of mining stock was under consideration by the courts, it appears to have been held that owing to the fluctuating and uncertain value of mining stocks it was often difficult to substantiate by competent evidence the market value thereof, and, owing to the risk of personal responsibility of individuals and corporations, that the courts should be liberal in extending full, adequate, and complete relief by decree of specific performance; the courts holding that there is a wide distinction between the shares of stock of a mining company, and public stocks which have been placed for sale upon stock boards, and are a subject of everyday sale in the financial markets of the country.”

We also on this question call the Court's attention to the text and cases cited on this question in 36 Cyc. 560:

**“4. Shares of Stock—**

(a) **Stock Readily Procured in Market.**—By the rule in this country, specific performance will not be decreed if the stock is one which is the subject of every-day sale in the market, so that its value can be readily and certainly ascertained.

(b) **Stock Having No Market Value and Not Readily Procurable.**—When, however, this is not the case, where the stock has no market value and cannot be readily obtained, except from a party to the contract, by the prevailing rule in this country specific performance may be had.

(c) **More Stringent Rule in Some States.**—In a number of jurisdictions, a more stringent rule has been announced; and it is held that plaintiff must show some

special circumstances rendering the legal remedy inadequate, over and above the mere fact that the stock has no quotable commercial value and is seldom for sale in the market, as that the stock is of peculiar value to him, or that he needs it in specie, or that its value cannot be estimated in damages.

(d) **Plaintiff Desiring Control of Corporation.**—Where the contract calls for the transfer of sufficient stock to make plaintiff the owner of one-half of the entire stock, so that its chief value to him is the power and influence given in the management of the corporation, this, in connection with the uncertain value of the stock, is a sufficient ground for specific performance.”

36 Cyc. 561 (Note)

“**Mining Stock.**—Stocks of mining corporations in the Western states are as a class a fit subject-matter for specific performance, owing to their great fluctuations in value, the difficulty of substantiating that value by competent evidence, etc. (*Treasurer v. Commercial Coal Mining Company*, 23 Cal., 390; *Frue v. Houghton*, 6 Colo. 318; *Rau v. Seidenberg*, 53 Misc. (N. Y.) 386; see also *Johnson v. Brooks*, 93 N. Y. 337).”

“The contract will be enforced where there is none of the stock on the market and no available way of proving the value of the stock or the amount of damages from the breach of contract. (*Dennison v. Keasby*, 200 Mo. 408); or where the stock has no quoted value or any definite market price or any certain value capable of exact ascertainment and cannot be obtained except from defendant. (*Butler v. Wright*, 186 N. Y. 259).”

In this case the complaint alleges that the stock has no market value and that its value in damages cannot be ascertained with any degree of certainty under paragraph 10 of the complaint; that paragraph, so far as all the defendants (except Loring) are concerned, stands admitted and undenied.

We have, however, placed ourselves in two positions on this matter. While it is our contention that Taylor fully earned his commission and became entitled to receive from the defendants the full amount of the stock which they

agreed to deliver to him under the contract as his compensation and that he was not required to do anything further to entitle him to that compensation, inasmuch as he had procured the necessary funds and the deal had fallen through by reason of misrepresentations of the defendant, the complaint goes further and alleges that Taylor, after the falsity of the representations had been discovered, offered to enter into a new arrangement based upon a fair and equitable abatement of the amount of the loan which would be proportionate to the disclosed value of the mine as compared with the represented value thereof. The testimony shows and is not disputed that at the meeting in California Taylor offered to make a loan of \$75,000 to be applied toward the payment of the debts of the company, and \$10,000 additional to be used as operating capital. The allegations and prayer in the complaint call for this alternative equitable relief which would also involve the specific performances of the contract and by reason whereof, we submit, that the plaintiff sought the relief to which he is entitled in the proper Tribunal.

Upon the question as to the right of an abatement, we call the Court's attention to:

**Walling v. Kinard**, 10 Tex. 508; 60 Am. Dec. 216;  
**Harbers v. Gadsden**, 62 Am. Dec. 390;  
**Hanks v. Kehoe**, 10 L. R. A. (N. S.) 125;  
**Epstein v. Kuhn**, 80 N. E. 80;  
**Melin v. Wooley**, 115 N. W. 654; 22 L. R. A. (N. S.) 595;  
**Sanborn v. Nockin**, 20 Minn. 178;  
**Keator v. Brown**, 57 N. J. Eq. 600;  
**Mitchell v. Zimmerman**, 51 Am. Dec. 717.

In **Mitchell v. Zimmerman**, there was an examination made by the vendee. The court held in that case that the vendor, under the circumstances, was in a better position to know the exact quantity of the land, and in the absence of suspicious circumstances, the vendee was entitled to rely on the vendor's representations.



These are also cases which, in our opinion, are analogous:

**Pruett v. Jones**, 36 S. W. 502;  
**Merrit v. Taylor**, 10 S. W. 532;  
**Meyers v. Estell**, 47 Miss. 421.  
**Estell v. Meyers**, 54 Miss. 174; 56 Miss. 800;  
**Mellick v. Cross**, 62 N. J. Eq. 545;  
**Straus v. Norris**, 77 N. J. Eq. 33.

The case of **Smith v. Werkheiser**, 115 N. W. 964, while not exactly upon the same question, is in principle absolutely in point. It was a case in which the vendor sold a newspaper. He represented that it had certain advertising and certain circulation. The purchaser paid a part of the purchase price, after making a partial examination, and gave a mortgage for the balance—note and mortgage. The vendee discovered the falsity of the representations after he had gone into possession of the property, and when the note and mortgage were presented for payment, he declined to pay, and asked for compensation on the mortgage for the amount of the deficiencies. The vendor refused, and threatened to commence an action for the foreclosure of the mortgage. An action was then brought by the vendee, the purchaser, in equity, enjoining the foreclosure of the mortgage, and asking for an abatement of the original purchase price and contract price, in an amount equal to the deficiencies on account of the representations, which was granted.

### LORING HAD NOTICE OF TAYLOR'S RIGHTS

Coming now to some questions of fact which deal with Mr. Loring's connection with the property. The question is whether or not Mr. Loring was placed upon notice of Mr. Taylor's rights. Mr. Loring himself testified that in New York Mr. Taylor told him that he was going to take the mine from the boys (p. 714). That was long before—a



month or more before—he had any transactions or dealings concerning the property. On August 9th Mr. Taylor wired Mr. Loring (p. 834) stating he had heard that he had an option on the properties and asking whether it was true; and also stated that he was advised by his attorneys that he had a good cause of action to compel them to deliver 62 per cent of the stock, or, in the alternative, suit for heavy damages. Now in connection with that, counsel set up an estoppel, that our election to proceed for damages, and the filing of the damage suit, was such an election as would justify Mr. Loring in going on. But from an examination of the testimony in this case the Court will see that Mr. Taylor sent that telegram on the 9th of August, 1920. On the 10th or 11th, Mr. Loring wired back (pp. 698-835): "Yes, I hold option on properties." Mr. Loring did not hold the option on those properties at that time (p. 699). Mr. Loring did not hold those options until a contract was made by him on the 16th of August; and when Mr. Loring entered into that contract on the 16th of August, he had additional notice that Mr. Taylor was going to take some further action, because of Mr. Taylor's protest on file—not on the 16th, but on the 23rd. The meeting held on the 16th was a directors' meeting, and that meeting outlined the contracts, subject to the approval of the stockholders' meeting to be held on the 23rd. On the 23rd, when Mr. Loring formally executed the contract and accepted it, there was before the very identical meeting, and the minutes so show, the protest of Mr. Taylor against the sale, contending that an inadequate notice of the meeting had been given. Mr. Loring therefore was on notice in June; he was on notice on the 9th of August, or as soon as he received the telegram, and he continued to be upon notice to the 23rd. Mr. Loring did not advance any money under the terms of this contract, before he had any notice. The moneys that Mr. Loring advanced, some \$17,000, were for the purchase by him of the claims of the Rochester Combination and the

Rochester Mines Company; an actual out and out purchase a loan and purchase of those claims, which he could enforce against the company if he so desired. They were afterward applied on the first payment of the purchase price of the property, but they were no part of the original transaction. Those assignments were taken by him on the 16th, before the contract had been approved by the stockholders, and he stood then in the position of being nothing more or less than an assignee of those particular claims; and he didn't pay any part of the purchase price until after he knew, on the 23rd, that Taylor was going to proceed and had made protest against the contract for the sale of all of the assets of the corporation. We say all of the assets of the corporation, because the notice which Mr. Taylor received said, "We will sell all of the assets of the corporation." The testimony in the record is that they did sell all of the assets of the corporation, except their corporate books, seal, and some stores and supplies, which were in the warehouse or storehouse; they sold substantially and practically every asset that they had, and no value was shown for those things they retained.

The meeting of the directors was held on the 16th of August, the stockholders' meeting was held on the 23rd; seven days intervened. The notice which was mailed to Mr. Taylor did not even give one week's notice, because it wasn't deposited in the post office, according to the cancellation mark on the envelope, until the 18th.

Now those are the facts, as we view them, with reference to Mr. Loring's connection with the transaction. Mr. Loring did not have an option, although he wired Taylor that he did (p. 699). Mr. Taylor proceeded to file his complaint afterward upon the strength of the statement, "I have an option." Mr. Loring had every opportunity after the receipt of Mr. Taylor's telegram, up to the 16th to act, up to the 23rd to withdraw, because it had not been rati-

fied, and with full notice that an attack would be made upon the sale of the corporate assets to Mr. Loring, under the terms as provided in that contract. It was an option only—Loring was under no **obligation** to buy. If he did so after notice it was at his peril.

ACTION AT LAW FOR DAMAGES IS NOT A BAR TO ACTION FOR SPECIFIC PERFORMANCE OF THE SAME CONTRACT.

Tobin v. Larkin, 183 Mass. 389.

Connihan v. Thompson, 111 Mass. 270.

Respectfully submitted,

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